

1 XINGFEI LUO
2 PO BOX 4886,
3 El Monte, CA 91734



4

5 Petitioner in Pro Se

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10

11 XINGFEI LUO,

No. 8:22-CV-01640-MEMF-KES

12 Petitioner,

13 v.

MOTION FOR DISCOVERY

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA

16 Respondent.

17

18 TO THE COURT AND TO RESPONDENT AND ITS COUNSEL OF RECORD:

19 Xingfei Luo (Petitioner) respectfully submits the following motion for discovery:

20 **I. PROCEDURAL HISTORY**

21 On September 6, 2022 Petitioner filed her Petition for Writ of Habeas Corpus (ECF
22 1). On June 22, 2023, Petitioner amended her petition. ECF 33.

23 On October 15, 2023, with Respondent yet to respond, Petitioner moved for
24 appointment of counsel and, also, for discovery. ECF 45. On October 30, 2023 the court
25 denied Petitioner's motion to conduct discovery without prejudice as premature. ECF 48.

26 On November 15, 2023, Respondent filed answer asserting that Petitioner received
27 effective assistance of counsel both at trial and on appeal, evidence was sufficient, the trial

1 court made no errors, and Petitioner failed to allege violations of federal law etc. ECF 50-
 2 1. On January 19, 2024, Petitioner moved for discovery and a fourth time for appointment
 3 of counsel. ECF 56. The court denied to appoint counsel but made no mention whether it
 4 denied Petitioner's motion for discovery or whether it denied discovery with or without
 5 prejudice. ECF 57.

6 II. FACTUAL BACKGROUND

7 After marrying a woman (Hanh Le) who is ten years older than him, Tomas
 8 Czodor (Czodor), concealed his marriage and tried to meet young women online. ECF 4,
 9 pp. 97-98. Before knowing Petitioner's name and meeting Petitioner in person, in August
 10 2018, Czodor proudly told Petitioner that he was raised as a nudist. Right after meeting
 11 Petitioner just once, while Petitioner still did not tell him her name, Czodor unsolicitedly
 12 sent Petitioner his nude photos and invited Petitioner to a nudist ranch. ECF 6, p. 153. After
 13 two gatherings, Czodor ghosted Petitioner. Petitioner, unaware of Czodor's marriage,
 14 went to Czodor's residence for answer on September 18, 2018. ECF 6, p. 155.

15 On September 26, 2018, eight days after Petitioner left Czodor's residence, Czodor
 16 reported the alleged vandalism and distribution of his nude photos. ECF 6, pp. 177-178.
 17 Despite during the entire time on September 18, 2023 when Petitioner was in front of
 18 Czodor's residence, Czodor had free access to his phone, making 911 call (ECF 6, p. 201),
 19 taking photos and shooting videos (ECF 6, pp. 159-163), no photos or videos show that
 20 Petitioner was actually scratching Czodor's door, no photos or videos of Petitioner with
 21 Czodor's damaged door were provided, no photos or videos show that Petitioner was
 22 standing next to Czodor's damaged door, despite Petitioner allegedly scratched Czodor's
 23 door for 20 minutes.

24 On September 10, 2018, after Petitioner allegedly threatened Czodor to distribute
 25 his nude photos, Czodor in fact made contact with the police but made no mention of
 26 Petitioner or any nude photos. ECF 6, p. 200. Despite all communication between
 27 Petitioner and Czodor was made through text messages, not a single message shows that
 28 Petitioner asked for Czodor's nude photos, not a single message shows that Czodor

1 requested Petitioner to keep his nude photos private, not a single message shows that
 2 Petitioner made any promise to keep his nude photos private before Czodor unsolicitedly
 3 sent Petitioner his nude photos. Nevertheless, Czodor – a married man deliberately
 4 concealing his marriage – sent his nude photos to Petitioner, a woman who never told him
 5 her name and met him just once, a woman who was not better than a stranger.

6 No officers ever saw Czodor’s damaged door or nude photos online. No officers
 7 ever took any photos of the damaged property. No officers ever checked or examined
 8 Czodor’s phone to see whether Czodor provided accurate and all relevant messages,
 9 photos and videos. No officers ever checked or examined Czodor’s phone to see whether
 10 Czodor sent his nude photos to multiple people. No officers ever verified whether
 11 Czodor’s story was taken out of context. No officers ever interviewed any of Czodor’s
 12 friends, customers, or wife. No officers ever indeed went out and collect evidence. No
 13 officers ever performed any meaningful investigation. Anything coming out from
 14 Czodor’s mouth was taken as true at face value. All “evidence” was in fact produced and
 15 provided by Czodor himself, in the form of a stack of paper, despite modern technology
 16 was readily available in 2018 and 2019 to the police. In effect, Czodor played the dual
 17 roles both as a police officer and complaining witness.

18 Six attorneys from the office of public defender cycled through Petitioner’s case,
 19 none of them did any investigation, none of them ever explained to Petitioner about her
 20 constitutional rights, none of them ever tried to bring the case to trial at a meaningful time
 21 and in a meaningful manner, none of them ever meaningfully discussed the case or
 22 strategy with Petitioner, none of them asked for Petitioner’s consent or authority to sign a
 23 stipulation with prosecution, none of them was able to expose Czodor’s perjury and fraud,
 24 none of them ever tried to attack the integrity of police work. Petitioner was astonished at
 25 trial by her trial counsel’s performance. Naturally, Petitioner was convicted of all counts
 26 she was charged.

27 After Petitioner’s conviction, Czodor demanded \$51,000 to remove 25 webpages
 28 that don’t even exist or aren’t viewable. ECF 20, pp. 15-16. Despite each year between

1 2014 and 2019, Czodor (a self-employed individual) reported to IRS that his net profit¹
 2 was ranging only between \$5,000 and \$10,000 per year (ECF 6. pp. 141, 143, 145, 147,
 3 149, 151), he concealed his net profit information² when requesting restitution and
 4 demanded \$26,496³ to compensate his income loss in 2018 and 2019, apparently for the
 5 purposes to make a windfall. Based on Czodor's net profit each year, he was in fact as
 6 poor as a church mouse. However, this church mouse was capable of staging crimes and
 7 manipulating the system to grant him a windfall.

8 In 2023 the prosecution, based on the exact same old evidence, prosecuted
 9 Petitioner once again alleging Petitioner failed to remove Czodor's nude photos posted in
 10 2018, Case No.: **23CM00067**. CF 1-138.⁴ After the acquittal, Petitioner filed two requests
 11 for transcripts but the trial court denied her second request. CF 139-144. After the trial
 12 court denied her request for records of Case No.: **23CM00067** on July 24, 2023, Petitioner
 13 immediately requested the case files from her court appointed counsel. However,
 14 Petitioner's counsel was unable to provide the case files until August 27, 2023 because
 15 she was out of the country. Subsequently, Petitioner has been diligently compiling
 16 exhibits, conducting legal research, and readying a new habeas petition under her

17 ¹ An employee ordinarily agrees to work for, and receives, a set wage or salary. His wages are not directly affected
 18 by the net income of the employer. In contrast, the self-employed person operating a "business" has no more income
 19 available than the net income of the "business" after paying necessary expenses of the "business." For instance, a
 20 person who sold \$10,000 worth of merchandise with a wholesale cost of \$5,000 and who had **out-of-pocket**
business-related expenses of \$2,000 would only have \$3,000 in **actual available earnings**. If the income loss was
 21 based on gross revenue of \$5,000 rather than **net earnings** of \$3,000, the person would be awarded a windfall of
 22 \$2,000 he would not have received if he had worked. Damage awards in injury to business cases are based on net
 23 profits. (See, e.g., *Kuffel v. Seaside Oil Co.* (1970) 11 Cal.App.3d 354, 366 [90 Cal.Rptr. 209] ["It is fundamental that
 24 in awarding damages for the loss of profits, net profits, not gross profits, are the proper measure of recovery"].) "Net
 25 profits are the gains made from sales 'after deducting the value of the labor, materials, rents, and all expenses,
 26 together with the interest of the capital employed.' [Citation.]"" [Citations.]" (See *Kids' Universe v. In2Labs* (2002) 95
 27 Cal.App.4th 870, 884 [116 Cal.Rptr.2d 158] (*Kids' Universe*). "Lost anticipated profits cannot be recovered if it is
 28 uncertain whether any profit would have been derived at all from the proposed undertaking. But lost prospective net
 profits may be recovered if the evidence shows, with reasonable certainty, both their occurrence and extent.
 [Citation.] It is enough to demonstrate a reasonable probability that profits would have been earned except for the
 defendant's conduct. [Citations.] Moreover, . . . a plaintiff is 'not required to establish the amount of its damages with
 absolute precision. . . . [Citation.]' [Citations.]" (*Kids' Universe*, supra, 95 Cal.App.4th at 1181 pp. 883-884.) Not
 only Czodor did not establish income loss, he did not establish any certainty of his income.

² Petitioner's court appointed counsel discovered Czodor's net profit by subpoenaing California Franchise Tax Board.

³ This requested amount of income loss is almost equal to Czodor's combined net profit in four years between 2015 and 2018.

⁴ The case file of Case No.: 23CM00067 is referred to as CF, as attached as Exhibit 2.

1 mistaken belief that she could not present new evidence in the instant case. While she was
 2 preparing a new habeas petition to state court Petitioner came across cases involving
 3 expanding record in federal habeas cases. Luo Decl., ¶ 2.

4 **III. GROUNDS FOR DISCOVERY**

5 **A. Petitioner Is Entitled to Introduce New Evidence and Expand Record under** 6 **Rule 7 of the Rules Governing Section 2254 Cases**

7 In *Holland v. Jackson*, 542 U.S. 649 (2004), the United States Supreme Court held
 8 that, whether or not a federal habeas petitioner seeks an evidentiary hearing, new evidence
 9 may only be considered in a federal habeas corpus proceeding when the failure to develop
 10 the facts in state court are not the petitioner's fault, or when the requirements of 28 U.S.C.
 11 § 2254(e)(2) are satisfied. *Holland*, 124 S.Ct. at 2738 (citing *Williams v. Taylor*, 529 U.S.
 12 420, 431-437 (2000)). In *Cooper-Smith*, the United States Court of Appeals for the Ninth
 13 Circuit held that it is proper to require a petitioner to make the showing required by §
 14 2254(e)(2) when seeking to expand the record pursuant to Rule 7, 28 U.S.C. foll. § 2254.
 15 *Cooper-Smith*, 397 F.3d at 1241.

16 "[N]ew factual allegations do not render a claim unexhausted unless they
 17 "fundamentally alter the legal claim already considered by the state courts." *Chacon v.*
 18 *Wood*, 36 F.3d 1459, 1468 (9th Cir. 1994) (quoting *Vasquez v. Hillery*, 474 U.S. 254, 260,
 19 106 S.Ct. 617, 88 L.Ed.2d 598 (1986))." *Belmontes v. Brown*, 414 1094, 1117 (9th Cir.
 20 2005). The presented facts, actions of defense counsel, and trial court's decisions during
 21 the 2023 prosecution do not "fundamentally alter" petitioner's ineffective assistance of
 22 counsel claim, unlawful amendment of complaint one day before trial, erroneous jury
 23 instruction claim, and actual innocence claim, therefore admission of the 2023 prosecution
 24 transcripts will not render those claims unexhausted. Instead, the 2023 transcripts
 25 represent the objective standard of reasonableness under prevailing professional norms.

26 In *Williams*, the United States Supreme Court held in relevant part that "[i]f there
 27 has been no lack of diligence at the relevant stages of the state court proceedings, the
 28 prisoner has not 'failed to develop' the facts under § 2254(e)(2)'s opening clause, and he

1 will be excused from showing compliance with the balance of the subsection's
 2 requirements." *Williams*, 529 U.S. at 437.

3 The claims that could be supported by the 2023 prosecution have been presented to
 4 California Supreme Court. Petitioner did not, therefore, show a lack of diligence in the
 5 state court proceedings and is not required to make a showing under § 2254(e)(2). Even if
 6 so required, Petitioner could not have been previously discovered through the exercise of
 7 due diligence, and the facts underlying the claim would be sufficient to establish by clear
 8 and convincing evidence that but for constitutional error, no reasonable fact finder would
 9 have found the applicant guilty of the underlying offense.

10 The 2023 prosecution effectively amounted to a retrial after a motion for a new
 11 trial. However, the crucial distinction here is that the "motion for a new trial" was initiated
 12 by the prosecution, not the defense.

13 In a surprising turn of events, Petitioner was acquitted.

14 Petitioner's subsequent acquittal of the same offense based on same evidence raises
 15 a profound question concerning the constitutionality of her prior conviction: How can a
 16 defendant be acquitted for the same offense, based on identical evidence, after having
 17 been previously convicted?

18 Petitioner's acquittal in 2023 serves as a potent testament to the inherent problems
 19 and constitutional violations in her initial conviction in 2021. There is no confidence in
 20 the integrity of Petitioner's 2021 conviction.

21 After the acquittal, Petitioner filed two requests for records but the trial court
 22 denied her second request. CF 139-144. Petitioner did not show any lack of diligence.

23 B. Discovery is Essential to Fully Develop Petitioner's Claims

24 Habeas is an important safeguard whose goal is to correct real and obvious wrongs.
 25 Unlike ordinary civil actions, discovery in habeas corpus requires good cause. *Bracy v.*
 26 *Gramley*, 520 U.S. 899, 904, 117 S.Ct. 1793, 1797 (1997). A party seeking discovery
 27 should demonstrate specific facts indicating that the sought discovery may well advance
 28 the party's cause. "Advancing the cause" means that the discovery must advance the

1 requestor's knowledge on the issues pertinent to cognizable habeas corpus issues. Good
 2 cause is shown "where specific allegations before the court show reason to believe that the
 3 petitioner may, if the facts are fully developed, be able to demonstrate that he is . . .
 4 entitled to relief." *Bracy*, 520 U.S. at 908-09 (citing *Harris v. Nelson*, 394 U.S. 287
 5 (1969)). "[A] district court abuse[s] its discretion in not ordering Rule 6(a) discovery
 6 when discovery [i]s 'essential' for the habeas petitioner to 'develop fully' his underlying
 7 claim." *Smith v. Mahoney*, 611 F.3d 978, 997 (9th Cir. 2010) (alterations in original)
 8 (internal quotation marks omitted) (quoting *Pham v. Terhune*, 400 F.3d 740, 743 (9th Cir.
 9 2005)).

	Case No. 19CM06724	Case No. 23CM00067
Prosecuting agency	Orange County District Attorney (ECF 3 at 79-80)	Orange County District Attorney (CF 30-31)
Allegations on complaint	Intentionally, knowingly, and unlawfully violated a protective order by failing to deactivate website and created new websites (ECF 3 at 79-80)	Willfully and unlawfully disobeyed the terms of a court order by failing to remove any pictures or references of the protected party from any social media websites or blogs she may have posted (CF 30-31)
Underlying domestic violence restraining order case number	Case No. 18V002374 filed in Orange County Superior Court (ECF 3 at 82-84)	Case No. 18V002374 filed in Orange County Superior Court (CF 30-31)
Terms of the court order alleged being violated	Remove content on the Internet relating to video, pictures, blogs, or websites about Tomas Czodor created	Remove any pictures or references of the protected party from any social media websites or blogs she may have

	by Ms. Luo. (ECF 4 at 120)	posted (CF 30-31, 35)
Domestic violence accuser	Tomas Czodor (ECF 4 at 28)	Tomas Czodor (CF 13)
Prosecution evidence	Online contents posted in 2018 (ECF 4 at 39-50)	Online contents posted in 2018 (CF 39, 82-94)

Essentially, Case No. 23CM00067 constitutes a new trial of the same matters addressed in Case No. 19CM06724. The actions of defense counsel at trial in 2023, as well as the decisions made by the trial court in 2023, both reflected by clerk's transcript and reporter's transcript of the 2023 prosecution, serve as pivotal evidence of how Petitioner's constitutional rights were seriously infringed upon in Case 19CM06724.

The discovery of the clerk's transcript and reporter's transcript of Case No. 23CM00067 is of paramount constitutional importance in the adjudication of the habeas corpus petition pertaining to Case No. 19CM06724. The pursuit of justice and the preservation of constitutional protections demand a thorough examination of these transcripts, as they may hold the key to rectifying any past injustices and ensuring the fair and equitable treatment of Petitioner. The transcripts of case no. 23CM00067 are "essential" for Petitioner to "develop fully" her claims.

After Petitioner's acquittal, Case No. 23CM00067 is currently placed under seal upon the request of Respondent. See <https://www.occourts.org/online-services/case-access/criminal-traffic-cases> (No case no. 23CM00067 is available for public access.) No trial transcript of case no. 23CM00067 can be ordered. See <https://www.occourts.org/online-services/court-reporter-transcript-requests>

The effective retrieval of transcripts of a sealed case presents abnormal challenge to Petitioner both financially and technically. The court should order Respondent to provide all clerk's transcript and reporter's transcript of Case No. 23CM00067.

IV. CONCLUSION

In a gross manner, Petitioner's constitutional rights were violated from the very

1 beginning to the end. Petitioner was be put on trial without the aid of counsel in any real
2 sense, and convicted upon incompetent evidence, or evidence irrelevant to the issue or
3 otherwise inadmissible.

4 For the reasons stated above, Petitioner has shown good cause and the court should
5 permit expanding record and discovery of the clerk's transcript and reporter's transcript of
6 Case No. 23CM00067. The court should order Respondent to provide all clerk's transcript
7 and reporter's transcript of Case No. 23CM00067.

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9 Dated: February 9, 2024

10 Respectfully submitted.

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12 /s/ XINGFEI LUO

13 XINGFEI LUO

14 Petitioner in Pro Se

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DECLARATION OF XINGFEI LUO

I, XINGFEI LUO, declare and state:

3 1. I am the petitioner in this petition. I have personal knowledge of all facts stated
4 herein. If called as a witness, I could and would competently testify thereto.

5 2. After the trial court denied my request for records of Case No. **23CM00067** on
6 July 24, 2023 I immediately requested the case files from my court appointed counsel.
7 However, my counsel was unable to provide the case files until August 27, 2023 because
8 she was out of the country. A true and correct copy of the correspondence is attached
9 hereto as Exhibit 1. A true and correct copy of the 23CM00067 case file is attached hereto
10 as Exhibit 2. Subsequently, I have been diligently compiling exhibits, conducting legal
11 research, and readying a new state habeas petition under my own mistaken belief that I
12 could not expand the record in the instant federal habeas case without first presenting the
13 evidence to state court. While I was preparing a new habeas petition to state court I came
14 across cases involving expanding record in federal habeas cases.

15 3. I am currently receiving food stamps. I have no financial means to obtain clerk's
16 transcript and reporter's transcript of Case No.: **23CM00067** that may cost hundreds of
17 dollars or even more.

18 4. The pro se clinic does not provide assistance in criminal matters. It offers no legal
19 advice or evaluation of case merits, and it does not offer support with legal strategy. Its
20 assistance is confined to explaining court forms and federal rules of civil procedure.

21 I declare under penalty of perjury under the laws of the State of California and
22 United States of America that the foregoing is true and correct.

24 || Executed in Los Angeles, CA on February 9, 2024.

/s/ XINGFEI LUO

CERTIFICATE OF SERVICE

I declare that I electronically filed the foregoing with the United States District Court, Central District of California. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

In addition, I electronically served the forgoing to the following email address:

michael.butera@doj.ca.gov

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on February 9, 2024

/s/ XINGFEI LUO

XINGFEI LUO, In Pro Per

EXHIBIT 1



23CM00067 Case Filings

From: "Mikhail, Marian" <Marian.Mikhail@ocaltdef.com>
To: "CPRArq@mail.com" <CPRArq@mail.com>
Date: Aug 27, 2023 4:25:21 PM

Please find attached your case filings and minutes.

CONFIDENTIAL EMAIL: The information contained in this email is confidential and may also be attorney-client privileged and constitute attorney work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify sender immediately.

Attachments

- Minutes_23CM00067.pdf
- Amended Complaint_23CM00067.pdf
- Complaint_23CM00067.pdf
- Court Advisement Prior to Trial_23CM00067.pdf
- Court Jury Instructions.pdf
- Court Order Shortening Time_23CM00067.pdf
- Court's Proposed Jury Instructions.pdf
- DA Opposition to Double Jeopardy Motion_23CM00067.pdf
- Defense Discovery Request_23CM00067.pdf
- Defense Motion in limine_23CM00067.pdf
- Defense Motion to Dismiss Double Jeopardy_23CM00067.pdf
- Defense Motion to Dismiss_First Amendment_23CM00067.pdf
- Motion to Dismiss_Insufficient Pleading_23CM00067.pdf
- Order Shortening Time Double Jeopardy Motion_23CM00067.pdf
- Prosecution Motion in limine.pdf
- Prosecution's Proposed Jury Instructions.pdf

EXHIBIT 2

Case Summary

Case Number: 23CM00067

OC Pay Number: 11200090

Originating Court: Central

Pay or Appear by:

Traffic School Completion Date:

Next Payment Date:

Defendant: Luo, Xingfei

Demographics:

Eyes: Brown
 Hair: Black
 Height(ft/in) : 5'5"
 Weight (lbs): 96

Names:

Last Name	First Name	Middle Name	Type
Luo	Xingfei		Real Name
Lou	Xingfei		Alias

Case Status:

Status: Dismissed
 Case Stage:
 Release Status: Released on Own Recognizance
 Warrant: N
 DMV Hold : N
 Charging Document: Complaint
 Mandatory Appearance: Y
 Owner's Resp: N
 Amendment #: 1

Counts:

Seq S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Disposition Date
1	0 04/20/2022	166(a)(4) PC	M	Contempt of court - disobey court order	NOT GUILTY	02/10/2023	Found Not Guilty by Jury	03/28/2023

Participants:

Role	Badge Agency	Name	Vacation Start	Vacation End
Alternate Defender	ALTD	Deputy Alternate Defender,		
District Attorney	OCDA	Nguyen-McDonald, Daniel		
Alternate Defender	ALTD	Mikhail, Marian		
District Attorney	OCDA	Gomez, Steven		
District Attorney	OCDA	Voge, James		
District Attorney	OCDA	Ellis, Therese		
Alternate Defender	ALTD	Follett, James		
District Attorney	OCDA	Johnson, Alexis		
District Attorney	OCDA	Zhan, MingMing		

Heard Hearings:

Date	Hearing Type - Reason	Courtroom	Hearing Status	Special Hearing Result
02/07/2023	Motion Dismissal	C47	Heard	
02/07/2023	Motion Dismissal	C48	Heard	
02/08/2023	Motion Dismissal	C48	Heard	Waives arraignment today
02/10/2023	Arraignment -	C48	Heard	
02/24/2023	Arraignment -	C54	Cancel	
03/03/2023	Pre Trial -	C47	Cancel	
03/03/2023	Pre Trial -	C50	Heard	Time not waived
03/10/2023	Pre Trial -	C47	Cancel	
03/10/2023	Pre Trial -	C51	Heard	waives statutory time for
03/16/2023	Jury Trial -	C47	Heard	
03/20/2023	Motion Dismiss [Penal Code 1385]	C47	Cancel	
03/20/2023	Jury Trial -	C47	Heard	
03/20/2023	Motion Dismiss [Penal Code 1385]	C47	Heard	
03/20/2023	Motion Dismiss [Penal Code 1385]	C53	Heard	
03/21/2023	Motion Dismissal	C47	Cancel	
03/21/2023	Jury Trial -	C47	Heard	
03/22/2023	Jury Trial -	C47	Heard	
03/22/2023	Jury Trial -	C53	Heard	waives statutory time for
03/23/2023	Jury Trial -	C53	Heard	waives statutory time for
03/24/2023	Jury Trial -	C53	Heard	waives statutory time for
03/27/2023	Jury Trial -	C53	Heard	waives statutory time for
03/28/2023	Jury Trial -	C53	Heard	

Case Summary

Case Number:	23CM00067	
OC Pay Number:	11200090	
Originating Court:	Central	
Defendant:	Luo, Xingfei	
Demographics:		
Sex:	Female	
Eyes:	Brown	
Hair:	Black	
Height(ft/in) :	5'5"	
Weight (lbs):	96	
Race:	Asian	
Address:	10628 Hallwood Drive Temple City, CA 91780	
Identifiers:		

Names:				
Last Name	First Name	Middle Name	Type	Date of Birth
Luo	Xingfei		Real Name	
Lou	Xingfei		Alias	

Case Status:	Status:	Closed
	Case Stage:	
	Release Status:	
	Warrant:	N
	DMV Hold :	N
	Charging Document:	Complaint
	Mandatory Appearance:	Y
	Owner's Resp:	N
	Amendment #:	1
	DA Case #:	22C07939
	DR #:	22-09260

Counts:										
Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Disposition Date	
1	0	04/20/2022	166(a)(4) PC	M	Contempt of court - disobey court order	NOT GUILTY	02/10/2023	Found Not Guilty by Jury	03/28/2023	

Professionals:						
	Role	Badge	Agency	Name	Vacation Start	Vacation End
	Alternate Defender	ALTD	Deputy Alternate Defender,			
	District Attorney	OCDA	Nguyen-McDonald, Daniel			
	Alternate Defender	ALTD	Mikhail, Marian			
	District Attorney	OCDA	Gomez, Steven			
	District Attorney	OCDA	Voge, James			
	District Attorney	OCDA	Ellis, Therese			
	Alternate Defender	ALTD	Follett, James			
	District Attorney	OCDA	Johnson, Alexis			
	District Attorney	OCDA	Zhan, MingMing			

Other Cases:			
	Case	Case Status	Violation Date
	19CM06724	Appeal	09/07/2018
	M-19285	Habeas Corpus Petition	
	M-20069	Habeas Corpus Petition	

Heard Hearings:					
	Date	Hearing Type - Reason	Courtroom	Hearing Status	Special Hearing Result
	02/07/2023	Motion Dismissal	C47	Heard	
	02/07/2023	Motion Dismissal	C48	Heard	
	02/08/2023	Motion Dismissal	C48	Heard	Waives arraignment today
	02/10/2023	Arraignment -	C48	Heard	

02/24/2023	Arraignment -	C54	#2696	
03/03/2023	Pre Trial -	C47	Cancel	
03/03/2023	Pre Trial -	C50	Heard	Time not waived
03/10/2023	Pre Trial -	C47	Cancel	
03/10/2023	Pre Trial -	C51	Heard	waives statutory time for
03/16/2023	Jury Trial -	C47	Heard	
03/20/2023	Motion Dismiss [Penal Code 1385]	C47	Cancel	
03/20/2023	Jury Trial -	C47	Heard	
03/20/2023	Motion Dismiss [Penal Code 1385]	C47	Heard	
03/20/2023	Motion Dismiss [Penal Code 1385]	C53	Heard	
03/21/2023	Motion Dismissal	C47	Cancel	
03/21/2023	Jury Trial -	C47	Heard	
03/22/2023	Jury Trial -	C47	Heard	
03/22/2023	Jury Trial -	C53	Heard	waives statutory time for
03/23/2023	Jury Trial -	C53	Heard	waives statutory time for
03/24/2023	Jury Trial -	C53	Heard	waives statutory time for
03/27/2023	Jury Trial -	C53	Heard	waives statutory time for
03/28/2023	Jury Trial -	C53	Heard	
07/24/2023	Chambers Work -	C56	Heard	

Register of Actions:

Date Action	Seq Nbr	Docket Code	Text	
12/30/2022	1	FLDOC	Original Complaint filed on 12/30/2022 by Orange County District Attorney.	
	2	FLNAM	Name filed: Luo, Xingfei	
	3	FLCNT	MISDEMEANOR charge of 273.6(a) PC filed as count 1. Date of violation: 04/20/2022.	
	4	CLADD	At the request of People, case calendared on 02/24/2023 at 08:30 AM in C54 for ARGN.	
	5	FI959	Accusatory pleading filed by the prosecutor pursuant to Penal Code section 959.1.	
	7	FIFCI	Arraignment Letter filed.	
	8	FIBWCPO	Body Worn Camera Protective Order filed.	
01/25/2023	1	FIMTN2	Defense Notice of Motion; Motion to Dismiss Pursuant to U.S. and C.A. Due Process for Insufficient Notice or Pleading; Or in the Alternative, Pursuant to Penal Code Section 1004 filed.	
	2	CLCST2	Motion re: Dismissal set on 02/07/2023 at 08:30 AM in Department C47.	
02/07/2023	1	HHELD	Hearing held on 02/07/2023 at 08:30:00 AM in Department C47 for Motion Dismissal.	
	2	OFJUD	Judicial Officer: Cynthia M Herrera, Judge	
	3	OFJA	Clerk: M. Diaz	
	4	OFBAL	Bailiff: F. Ramirez	
	5	APDDA	People represented by Steven Gomez, Deputy District Attorney, present.	
	6	APXTT	Alternate Defender appointed based on prior representation on case 19CM06724 which is currently on appeal	
	7	APDAL	Court appoints Alternate Defender to represent Defendant.	
	8	APNDC	Defendant not present in Court represented by Marian Mikhail, Alternate Defender.	
	10	WV977	Defendant's appearance is waived pursuant to Penal Code 977(a).	
	11	ADSCD	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.	
	12	TRPDR	Case called. People answer ready. Defense answers ready.	
	13	CLRSN2	Motion re: Dismissal reassigned for 02/07/2023 at 11:15 AM in Department C48, Gregg L. Prickett Judge, 30 minute time estimate.	
	14	CLTXT	all parties to report forthwith to C48	
	15	CLTRM	Arraignment for 02/24/2023 08:30 AM in C54 to remain.	
	16	TEXT	Release status to be addressed on the scheduled arraignment date of 2/24/23	
	17	OFMCD	Minutes entered by C. Shenkman on 02/07/2023.	
	18	HHELD	Hearing held on 02/07/2023 at 11:15:00 AM in Department C48 for Motion Dismissal.	
	19	OFJUD	Judicial Officer: Gregg L. Prickett, Judge	
	20	OFJA	Clerk: K. Barnstein	
	21	OFBAL	Bailiff: J. L. Mc Million	
	22	APNDC	Defendant not present in Court represented by Marian Mikhail, Alternate Defender.	
	23	WV977	Defendant's appearance is waived pursuant to Penal Code 977(a).	
	24	APDDA	People represented by Daniel Nguyen-McDonald, Deputy District Attorney, present.	
	25	CLSET2	Motion re: Dismissal trailed to 02/08/2023 at 10:00 AM in Department C48.	
	26	CLTRM	Arraignment for 02/24/2023 08:30 AM in C54 to remain.	
02/08/2023	1	HHELD	Hearing held on 02/08/2023 at 10:00:00 AM in Department C48 for Motion Dismissal.	
	2	OFJUD	Judicial Officer: Gregg L. Prickett, Judge	
	3	OFJA	Clerk: K. Barnstein	
	4	OFBAL	Bailiff: T. Barron	
	5	APNDC	Defendant not present in Court represented by Marian Mikhail, Alternate Defender.	
	6	WV977	Defendant's appearance is waived pursuant to Penal Code 977(a).	
	7	APDDA	People represented by Daniel Nguyen-McDonald, Deputy District Attorney, present.	

8	FIAMD	First Amended Complaint filed by Orange County District Attorney.
9	CTAMC	To the First Amended Complaint count 1 now reads 166(a)(4) PC, MISDEMEANOR. Date of violation: 04/20/2022.
10	WVRAT	Defendant waives the right to be arraigned today.
11	CLSET	Arraignment set on 02/10/2023 at 08:30 AM in Department C48.
12	CLTRM	Arraignment for 02/24/2023 08:30 AM in C54 to remain.
02/10/2023	1	HHELD Hearing held on 02/10/2023 at 08:30:00 AM in Department C48 for Arraignment.
	2	OFJUD Judicial Officer: Gregg L. Prickett, Judge
	3	OFJA Clerk: K. Barnstein
	4	OFBAL Bailiff: J. L. Mc Million
	5	APDWAL Defendant present in Court with counsel Marian Mikhail, Alternate Defender.
	6	APDDA People represented by James Voge, Deputy District Attorney, present.
	7	CPCDD Copy of First Amended Complaint given to defense counsel.
	8	WVRAA Defendant waives reading and advisement of the First Amended Complaint.
	9	PLNGA To the First Amended Complaint defendant pleads NOT GUILTY to all counts.
	10	MORES Defense reserves all motions.
	11	DFSFC Defendant invokes state, federal and constitutional rights.
	12	DFIRD Informal request for discovery made by Defense.
	13	CLSET Pre Trial set on 03/03/2023 at 09:00 AM in Department C47.
	14	DFOTR Defendant ordered to physically appear.
	15	CLSET Jury Trial set on 03/16/2023 at 09:00 AM in Department C47.
	16	CLVAC Arraignment vacated for 02/24/2023 at 08:30 AM in C54. (Entered NUNC_PRO_TUNC on 02/23/23)
	17	DFOTR Defendant ordered to physically appear.
	18	DSROR Court orders defendant released on own recognizance.
	19	COBWCA Court orders the Body Worn Camera Protective Order filed on 12/30/2022 approved, issued and in full effect.
02/15/2023	1	FITXT Request for Discovery filed.
02/23/2023	1	NUNCPT Nunc Pro Tunc entry(s) made on this date for 02/10/2023.
03/01/2023	1	CLTRF Calendar Line for PT transferred from C47 on 03/03/2023 at 09:00 AM to C50 on 03/03/2023 at 09:00 AM.
03/03/2023	1	HHELD Hearing held on 03/03/2023 at 09:00:00 AM in Department C50 for Pre Trial.
	2	OFJUD Judicial Officer: William Scott Zidbeck, Judge
	3	OFJA Clerk: V. Barragan
	4	OFBAL Bailiff: C. Herrera
	5	TRPR Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	6	APDDA People represented by Steven Gomez, Deputy District Attorney, present.
	7	APDWAL Defendant present in Court with counsel Marian Mikhail, Alternate Defender.
	8	FICON Request for Continuance - Misdemeanor filed.
	9	CLCON Pre Trial continued to 03/10/2023 at 08:30 AM in Department C47 by stipulation of all parties.
	10	TEXT Court authorizes 977 appearance.
	11	CLTRM Jury Trial for 03/16/2023 09:00 AM in C47 to remain.
	12	DFOTR Defendant ordered to appear.
	13	WVNWT Defendant does not waive statutory time for Jury Trial.
	14	DSOCN Defendant's release on own recognizance continued.
	15	TXKPW Keep with companion cases(s) 19CM06724.
	16	OFMCD Minutes entered by H. Gomez on 03/03/2023.
03/08/2023	1	CLTRF Calendar Line for PT transferred from C47 on 03/10/2023 at 08:30 AM to C51 on 03/10/2023 at 08:30 AM.
03/10/2023	1	HHELD Hearing held on 03/10/2023 at 08:30:00 AM in Department C51 for Pre Trial.
	2	OFJUD Judicial Officer: Stephen J. McGreevy, Judge
	3	OFJA Clerk: E. Flores
	4	OFBAL Bailiff: A. Gonzales
	5	APDDA People represented by Alexis Johnson, Deputy District Attorney, present.
	6	APNDC Defendant not present in Court represented by Marian Mikhail, Alternate Defender.
	7	TEXT Although Judge McGreevy believes he can and will be impartial in this matter, to comply with this requirement, Court discloses the following: Judge McGreevy was elected to the Orange County Superior Court in June of 2022. Before taking the bench, Judge McGreevy worked as a prosecutor in the Orange County District Attorney's office for 25 years. When Judge McGreevy left the OCDA's office, his job title was Assistant District Attorney in charge of the Homicide Unit. For 9 months he was an Assistant District Attorney in the Gang Unit. Prior to being an Assistant District Attorney, Judge McGreevy worked as a Senior Deputy District Attorney in the Homicide Unit and the Sexual Assault Unit.
	8	FICON Request for Continuance - Misdemeanor filed.
	9	CLTRM Jury Trial for 03/16/2023 09:00 AM in C47 to remain.
	10	TEXT Defendant is ordered to appear unless advised by defense counsel that matter will be continued.
	11	DSOCN Defendant's release on own recognizance continued.
	12	TXKPW Keep with companion cases(s) 19CM06724.
03/14/2023	1	FIMTN2 Defense Notice of Motion; Motion to Dismiss in Violation of Double Jeopardy Under the California and US Constitutions; Penal Code Section 654; and In the Interest of Justice Under Penal Code Section 1385 filed.
	2	TXRNF Request and Order Shortening Time received, not filed.
	3	CLCST2 Motion re: Dismissal set on 03/21/2023 at 08:30 AM in Department C47.
03/16/2023	1	HHELD Hearing held on 03/16/2023 at 09:00:00 AM in Department C47 for Jury Trial.

2	OFJUD	Judicial Officer: Cynthia M Herrera, Judge
3	OFJA	Clerk: C. Shenkman
4	OFBAL	Bailiff: F. Ramirez
5	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
6	APDDA	People represented by Therese Ellis, Deputy District Attorney, present.
7	APDWAL	Defendant present in Court with counsel Marian Mikhail, Alternate Defender.
8	ADSCD	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
9	CORAC	Court read and considered Request and Order Shortening Time.
10	MOTBY	Motion by Defense to shorten time for Motion to Dismiss in Violation of Double Jeopardy
11	MOTION	Motion argued.
12	MOTION	Motion granted.
13	MOPEO	Objection by the People.
14	TEXT	Defense requests to set Motion and Jury Trial on 3/21/23 if Court grants shortening of time. Request was denied. (Entered NUNC_PRO_TUNC on 03/17/23)
16	TRPDR	Case called. People answer ready. Defense answers not ready.
19	CLSET2	Motion re: Dismiss [Penal Code 1385] set on 03/20/2023 at 08:30 AM in Department C47. (Entered NUNC_PRO_TUNC on 03/17/23)
21	CLSET	Jury Trial trailed to 03/20/2023 at 08:30 AM in Department C47.
22	DFOTR	Defendant ordered to appear.
23	CLTXT	Day 45 is 3/27/23
24	DSOCN	Defendant's release on own recognizance continued.
25	TXKPW	Keep with companion cases(s) 19CM06724.
26	OFMDD	Minutes of 03/16/2023 entered on 03/17/2023.
03/17/2023	1	NUNCPT Nunc Pro Tunc entry(s) made on this date for 03/16/2023.
	2	NUNCPT Nunc Pro Tunc entry(s) made on this date for 03/16/2023.
	3	NUNCPT Nunc Pro Tunc entry(s) made on this date for 03/16/2023.
03/20/2023	1	FITXT People's Opposition to Defense Omnibus Motion to Dismiss filed.
	2	HHELD Hearing held on 03/20/2023 at 08:30:00 AM in Department C47 for Motion Dismiss [Penal Code 1385].
	3	OFJUD Judicial Officer: Cynthia M Herrera, Judge
	4	OFJA Clerk: M. Diaz
	5	OFBAL Bailiff: F. Ramirez
	6	OFMCD Minutes entered by C. Shenkman on 03/20/2023.
	7	APDDA People represented by Daniel Nguyen-McDonald, Deputy District Attorney, present.
	8	APDWAL Defendant present in Court with counsel James Follett, Alternate Defender.
	9	ADSCD Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
	10	TEXT As to the Motion:
	11	TRPDR Case called. People answer ready. Defense answers ready.
	12	CLRSN2 Motion re: Dismiss [Penal Code 1385] reassigned for 03/20/2023 at 10:30 AM in Department C53, H. Shaina Colover Judge, 30 minute estimate.
	13	CLTXT All parties to report forthwith
	14	CLTRM Jury Trial for 03/20/2023 08:30 AM in C47 to remain.
	15	DSOCN Defendant's release on own recognizance continued.
	16	HHELD Hearing held on 03/20/2023 at 10:30:00 AM in Department C53 for Motion Dismiss [Penal Code 1385].
	17	OFJUD Judicial Officer: H. Shaina Colover, Judge
	18	OFJA Clerk: M. Ruiz
	19	OFBAL Bailiff: S. Garcia
	20	TRPRT Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	21	TRIOC In open court at 10:11 AM
	22	APDDA People represented by Daniel Nguyen-McDonald, Deputy District Attorney, present.
	23	APDWAL Defendant present in Court with counsel James Follett, Alternate Defender.
	24	CORAC Court read and considered Motion to Dismiss, Request, Order for Shortening time and People's Opposition.
	25	MOTION Motion argued.
	26	TRALP2 Again in open court at 01:51 PM. Defendant present with counsel. People duly represented.
	27	TRXT Defense resumes argument on Motion to Dismiss.
	28	MOTION Motion denied.
	29	TEXT Court states ruling is for all and without prejudice.- reasons as stated on the record.
	30	FIORD Order Shortening Time signed and filed.
	31	CLTRM Jury Trial for 03/20/2023 08:30 AM in C47 to remain.
	32	DFOTR Defendant ordered to appear.
	33	DSOCN Defendant's release on own recognizance continued.
	35	HHELD Hearing held on 03/20/2023 at 08:30 AM in Department C47 for Jury Trial.
	36	APDDA People represented by MingMing Zhan, Deputy District Attorney, present.
	37	APDWAL Defendant present in Court with counsel James Follett, Alternate Defender.

38	TRPDR	Case called. People answer ready. Defense answers ready.
39	MOTBY	Oral motion by Defense to trail the matter to 03/22/2023.
40	TEXT	People state there are potential witness availability issues and request to have the matter trail day by day.
41	MOTION	Motion argued.
42	TEXT	Parties are heard as to discovery issues.
43	TRPRPT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
44	TEXT	Court memorialized the proceedings thus far this afternoon.
45	TEXT	Further argument as to potential discovery issues is heard.
46	TEXT	Defense motion to trail the matter to 03/22/2023 is denied.
47	CLTXT	Upon the Court's own motion:
48	CLSET	Jury Trial trailed to 03/21/2023 at 01:30 PM in Department C47.
49	DFOTR	Defendant ordered to appear.
50	CLTXT	Day 39 of 45.
51	DSOCN	Defendant's release on own recognizance continued.
52	TXKPW	Keep with companion cases(s) 19CM06724.
53	OFMCD	Minutes entered by M. Diaz on 03/20/2023.
03/21/2023	1	HHELD Hearing held on 03/21/2023 at 01:30:00 PM in Department C47 for Jury Trial.
	2	OFJUD Judicial Officer: Cynthia M Herrera, Judge
	3	OFJA Clerk: C. Shenkman
	4	OFBAL Bailiff: F. Ramirez
	5	APDDA People represented by MingMing Zhan, Deputy District Attorney, present.
	6	APDWAL Defendant present in Court with counsel James Follett, Alternate Defender.
	7	ADSCD Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
	8	TRPDR Case called. People answer ready. Defense answers not ready.
	9	CLSET Jury Trial trailed to 03/22/2023 at 08:30 AM in Department C47.
	10	TEXT Jury trial trailed at request of defense
	11	DFOTR Defendant ordered to appear.
	12	CLTXT day 40 of 45
	13	DSOCN Defendant's release on own recognizance continued.
	14	TXKPW Keep with companion cases(s) 19CM06724.
03/22/2023	1	HHELD Hearing held on 03/22/2023 at 08:30:00 AM in Department C47 for Jury Trial.
	2	OFJUD Judicial Officer: Cynthia M Herrera, Judge
	3	OFJA Clerk: C. Shenkman
	4	OFBAL Bailiff: F. Ramirez
	5	APDDA People represented by MingMing Zhan, Deputy District Attorney, present.
	6	APDWAL Defendant present in Court with counsel James Follett, Alternate Defender.
	7	ADSCD Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
	8	TRPDR Case called. People answer ready. Defense answers ready.
	9	CLRSN Jury Trial reassigned for 03/22/2023 at 09:30 AM in Department C53, Judge H. Shaina Colover, 4 day time estimate.
	10	CLTXT Parties ordered to report forthwith.
	11	TXKPW Keep with companion cases(s) 19CM06724.
	12	OFMCD Minutes entered by M. Diaz on 03/22/2023.
	13	HHELD Hearing held on 03/22/2023 at 09:30:00 AM in Department C53 for Jury Trial.
	14	OFJUD Judicial Officer: H. Shaina Colover, Judge
	15	OFJA Clerk: M. Ruiz
	16	OFBAL Bailiff: S. Garcia
	17	FIMTN People Motion Pursuant to Evidence Code 402 filed.
	18	FIMTN Defense Motion Pursuant to Evidence Code 402 filed.
	19	TRCBR At 10:09 AM, Court and Counsel confer in chambers without court monitor present.
	20	TRXTT Chamber conference concludes at 11:19 AM.
	21	TRXTT The Court directs the clerk to order a panel of 40 prospective jurors for this date at 1:30 PM.
	22	TRPRPT Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	23	TRIOC In open court at 11:34 AM
	24	APDDA People represented by MingMing Zhan, Deputy District Attorney, present.
	25	APDWAL Defendant present in Court with counsel James Follett, Alternate Defender.
	26	TRPDR Case called. People answer ready. Defense answers ready.
	27	FITXT Court Advisement and Trial Stipulations Department C53 filed.
	28	TRXTT The Court has provided a copy of Trial and Jury Selection Department C53 to counsel.
	29	TRXTT Court memorializes previous chambers conference taken at 9:43 AM.
	30	TRXTT The Court reviewed People's potential exhibit list.
	31	TRXTT All parties are present and ready to proceed with 402 Evidence Code motions as follows:
	32	TRXTT The Court now hears the Peoples 402 Motions in Limine.

#2700

34	CLTXT	Peoples Motion in Limine Number One (1).
35	MOTBY	Motion by People to exclude questions regarding the Legality of Detention, Searches, or Miranda Advisements
36	MOTION	Motion argued.
37	TRXT	Court grants motion as modified on the record.
38	CLTXT	Peoples Motion in Limine Number Two (2).
39	MOTBY	Motion by People to exclude questions and mentioning regarding double jeopardy and the legality of the charge.
40	TRXT	No objection by the Defense.
41	MOTION	Motion granted.
42	CLTXT	Peoples Motion in Limine Number Three (3).
43	MOTBY	Oral motion by People to exclude questions and mentioning regarding the restitution amount ordered for the victim Mr. Czodor in 19CM06724
44	MOTION	Motion granted.
45	CLTXT	Peoples Motion in Limine Number Four (4).
46	MOTBY	Motion by People to exclude reference to the ultimate impact of the jury verdict on defendant and her family and any evidence to garner sympathy.
47	MOTION	Motion granted.
48	CLTXT	Peoples Motion in Limine Number Five (5).
49	MOXWG	Motion by People to exclude all witnesses from the courtroom granted.
50	CLTXT	Peoples Motion in Limine Number Six (6).
51	MOTBY	Motion by People to exclude testimonial evidence from defendant's witnesses
52	TRXT	No objection by the Defense.
53	MOTION	Motion granted.
54	CLTXT	Peoples Motion in Limine Number Seven (7).
55	MOTBY	Motion by People to exclude arguments violating the "Golden Rule."
56	TRXT	No objection by the Defense.
57	MOTION	Motion granted.
58	CLTXT	Peoples Motion in Limine Number Eight (8).
59	MOTBY	Motion by People to exclude all references to a mistrial, prosecutorial misconduct or error, 1118 motions, Wheeler motions, alleged discovery violations, or similarly inflammatory objections and motions in the presence of the jury
60	TRXT	No objection by the Defense.
61	TRXT	Court grants motion as modified on the record.
62	CLTXT	Peoples Motion in Limine Number Nine (9).
63	MOTBY	Motion by People to request Discovery Under Penal Code 1054.3
64	TRXT	No objection by the Defense.
65	MOTION	Motion granted.
66	CLTXT	Peoples Motion in Limine Number Ten (10).
67	MOTBY	Motion by People to request defense to disclose any defense exhibits or transcripts prior to introducing them to the Jury
68	TRXT	Court grants motion as modified on the record.
69	CLTXT	Peoples Motion in Limine Number Eleven (11).
70	MOTBY	Motion by People to admit prior statements of defendant when offered against the defendant
71	MOTION	Motion argued.
72	TRXT	Court will rule after jury selection.
73	CLTXT	Peoples Motion in Limine Number Twelve (12).
74	MOTBY	Motion by People to exclude prior statements of the defendant when offered by the defense
75	TRXT	Court will rule after jury selection.
76	CLTXT	Peoples Motion in Limine Number Thirteen (13).
77	MOTBY	Motion by People to admit (1) Certified Restraining Orders issued in 18V002374 and (2) Minute Order from July 29, 21 through judicial notice
78	TRXT	Court will rule after jury selection.
79	CLTXT	Peoples Motion in Limine Number Fourteen (14).
80	MOTBY	Motion by People to introduce other acts of domestic violence evidence pursuant to evidence code section 1109
81	TRXT	Court will rule after jury selection.
82	CLTXT	Peoples Motion in Limine Number Fifteen (15).
83	MOTBY	Motion by People to exclude questions and mentioning regarding the following arrests and/or conviction of Mr. Czodor: (a) 7/27/08 arrest of CA B&P 7028(a) (arrest relief granted per 851.93PC) (b) 5/29/08 conviction of CA B&P 7028(a) a misdemeanor in 08NM05806 (c) 10/17/08 arrest of VC31 (Dismissed in the interest of justice) (d) 7/15/10 conviction of CA B&P 7028(a), 7027.1 (a), and 16240 as misdemeanors in 09CF3055
84	MOTION	Motion granted.
85	TRXT	The Court now hears the Defense 402 Motions in Limine.
86	CLTXT	Defense Motion in Limine Number One (1A).
87	MOXWG	Motion by Defense to exclude all witnesses from the courtroom granted.
88	CLTXT	Defense Motion in Limine Number One (1B).
89	MOTBY	Motion by Defense to admonish all witnesses not to communicate with one another during the course of trial on matters regarding this case. Motion to advise the prosecutor to inform prosecution witnesses not to communicate with one another during the course of the trial on matters regarding the case.
90	MONOB	No objection by People.
91	MOTION	Motion granted.
92	CLTXT	Defense Motion in Limine Number One (1C).

93	MOTBY	Motion by Defense for each objection posed during #2701 motions to be deemed a continuing objection to the admission of the proffered evidence
94	MONOB	No objection by People.
95	MOTION	Motion granted.
96	CLTXT	Defense Motion in Limine Number One (1D).
97	MOTBY	Motion by Defense to order that all parties refrain from referring to the Office of the District Attorney by "the people."
98	MOTION	Motion denied.
99	TRXT	Reasons as stated on the record.
100	CLTXT	Defense Motion in Limine Number One (1E).
101	MOTBY	Motion by Defense to order the prosecutor to refrain from referring to Defense Counsel as the Public Defender or an employee of Orange County. Order the Prosecutor to instruct all his witnesses to do the same.
102	MONOB	No objection by People.
103	MOTION	Motion granted.
104	CLTXT	Defense Motion in Limine Number One (1F).
105	MOTBY	Motion by People to have the entire jury trial recorded, including all discussions that are made outside the presence of the Jury.
106	MONOB	No objection by People.
107	MOTION	Motion granted.
108	CLTXT	Defense Motion in Limine Number One (1G).
109	MOTBY	Motion by People to order the Deputy District Attorney to refrain from making any comment insinuation, or statement at any time during the trial of this matter with respect to the defendant's assertion of the defendant's right to remain silent or failure to testify
110	MONOB	No objection by People.
111	MOTION	Motion granted.
112	CLTXT	Defense Motion in Limine Number Two (2).
113	MOTBY	Motion by Defense to preclude the prosecution from attempting to amend the complaint
114	TRXT	Court grants motion. Court will rule in accordance with the law- reasons as stated on the record.
115	CLTXT	Defense Motion in Limine Number Three (3).
116	MOTBY	Motion by Defense requests that the prosecution disclose any and all exculpatory and impeachment evidence as required by BRADY and its progeny
117	MONOB	No objection by People.
118	MOTION	Motion granted.
119	CLTXT	Defense Motion in Limine Number Four (4).
120	MOTBY	Motion by Defense for prosecution to provide defense with copies of any photos, exhibits, transcripts, or real evidence it intends to use
121	MONOB	No objection by People.
122	MOTION	Motion granted.
123	CLTXT	Defense Motion in Limine Number Five (5).
124	MOTBY	Motion by Defense to exclude all witnesses not properly disclosed under penal code 1054.1
125	MONOB	No objection by Defense.
126	MOTION	Motion granted.
127	CLTXT	Defense Motion in Limine Number Six (6).
128	MOTBY	Motion by Defense to prohibit prosecution witnesses from commenting on the veracity of other witness testimony
129	MONOB	No objection by People.
130	MOTION	Motion granted.
131	CLTXT	Defense Motion in Limine Number Seven (7).
132	MOTBY	Motion by Defense order the prosecution to disclose all information it intends to use to impeach the defendant
133	MOTION	Motion granted.
135	CLTXT	Defense Motion in Limine Number Eight (8).
136	MOTBY	Motion by Defense to require the Deputy District Attorney to disclose oral statements made to the prosecutores office before or during trial by witnesses, including law enforcement witnesses.
137	TRXT	Court will rule after jury selection.
138	CLTXT	Defense Motion in Limine Number Nine (9).
139	MOTBY	Motion by Defense requests that all objections be federalized
140	TRXT	Court will rule after jury selection.
141	CLTXT	Defense Motion in Limine Number Ten (10).
142	MOTBY	Motion by Defense requests the court preclude Ms. Luo's statements before the family court
143	TRXT	Court will rule after jury selection.
144	CLTXT	Defense Motion in Limine Number Eleven (11).
145	MOTBY	Oral motion by Defense moves to preclude any discussions of the events of the 19CM case
146	TRXT	Court will rule after jury selection.
147	CLTXT	Defense Motion in Limine Number Twelve (12).
148	MOTBY	Motion by Defense moves to preclude any use by the prosecution of Ms. Luo's 19CM conviction to establish the element of control over the alleged postings
149	TRXT	Court will rule after jury selection.
151	CLTXT	Defense Motion in Limine Number Thirteen (13).
152	MOTBY	Motion by Defense to preclude any acts of prior conduct pursuant to evidence code section 1101(b).
153	MOTION	Motion denied.
155	CLTXT	Defense Motion in Limine Number Fourteen (14).

156	MOTBY	Motion by Defense objects to any reference to Ms. #25702 criminal history, including any open cases
157	TRXT	Court will rule after jury selection.
158	CLTXT	Defense Motion in Limine Number Fifteen (15).
159	MOTBY	Motion by Defense prohibit the prosecutors from making "community caretaker" arguments in closing
161	MONOB	No objection by People.
162	MOTION	Motion granted.
163	CLTXT	Defense Motion in Limine Number Sixteen (16).
164	MOTBY	Motion by Defense order the prosecution to refrain from referring to Tomas Czodor as a victim in this case
166	TRXT	Court grants motion as modified on the record only as to "alleged victim."
167	CLTXT	Defense Motion in Limine Number Seventeen (17).
168	MOTBY	Motion by Defense order the prosecution to refrain from discussing different sentencing options or any form of punishment in the presence of the Jury
169	MOTION	Motion granted.
170	CLTXT	Defense Motion in Limine Number Eighteen (18).
171	MOTBY	Motion by Defense order the prosecution to not trivialize the reasonable doubt standard
172	TRXT	Court grants motion as modified on the record.
174	CLTXT	Defense Motion in Limine Number Nineteen (19).
175	MOTBY	Motion by Defense order voir dire to comport with code civil procedure section 225(b) and not engage in improper questioning or priming
176	MOTION	Motion granted.
178	CLTXT	Defense Motion in Limine Number Twenty (20).
179	MOTBY	Motion by Defense order the prosecution, the court, and court staff to refrain from referring to Ms. Luo by anything, except for her name, particularly "The Defendant," in the presence of the Jury
180	MOTION	Motion denied.
182	CLTXT	Defense Motion in Limine Number Twenty One (21)
183	MOTBY	Motion by Defense order that the parties admonish their witnesses of any in limine rulings limiting their testimony
184	MOTION	Motion granted.
186	CLTXT	Defense Motion in Limine Number Twenty Two (22)
187	MOTBY	Motion by Defense order that all in limine rulings remain in full force and effect for the duration of the trial
188	MOTION	Motion granted.
190	CLTXT	Defense Motion in Limine Number Twenty Three (23)
191	MOTBY	Motion by Defense reserve remaining motions in limine to be argued orally
192	MOTION	Motion granted.
194	TRXT	Both parties agree and do not object to any of each other's remaining 402 motions to be ruled on after jury selection.
195	TRREC	At 12:18 PM, court declared a recess.
196	TRCBR	At 01:48 PM, Court and Counsel confer in chambers without court monitor present.
197	TRXT	Chamber conference concludes at 2:08 PM.
198	TRALP2	Again in open court at 02:09 PM. Defendant present with counsel. People duly represented. Jury is not present.
200	TRXT	The Court memorializes previous chambers conference taken at 1:48 PM.
201	TRXT	Discussions held as to First Amended Complaint and charges and how the court will read it to the prospective jurors.
202	TRREC	At 02:19 PM, court declared a recess.
203	TRXT	At 2:19 PM, prospective jurors present in the hallway outside Department C53. Roll call taken by Deputy S. Gacia and Clerk M. Ruiz, and the prospective jurors were assigned a juror number.
204	TRXT	Off the record discussions held.
205	TRXT	At 2:30 PM, prospective jurors enter courtroom.
206	TRIOC	In open court at 02:35 PM
207	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
208	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
209	CLTME	Time estimate: 4 days.
210	TRXT	Court and Counsel are proceeding on First Amended Complaint.
211	TRJSE	Roll call having been taken, prospective jurors were sworn for examination.
212	TRXT	At 2:35 PM, Judge Colover enters courtroom.
213	TRJP	Prospective jurors are present and in their proper places.
214	TRJEX	Prospective juror(s) called by the clerk to fill the jury box.
215	TRXT	The Court welcomes the prospective jurors.
216	TRXT	People and Defense introduce themselves to prospective jurors.
217	TRXT	People read potential witness list to prospective jurors.
218	TRXT	The Court inquired of prospective jurors to determine if anyone recognized any of the parties or potential witnesses related to this case. Court heard no response from the prospective jurors.
219	TRXT	The Court introduces court staff to prospective jurors.
220	TRXT	Court advised jurors regarding time estimate and trial scheduling.
221	TRJAP	Court read First Amended Complaint to the prospective jurors and advised them of the defendant's plea of not guilty thereto.
222	TRXT	The Court addressed prospective jurors and inquires of any deferrals and hardship. (Pre-paid personal trips). There is no response to this inquiry.
223	TRXT	The Court addressed prospective jurors and inquires of any deferrals and hardship. (Medical Appointments) Prospective juror number 115 in the audience addressed the court and court and inquires. Court excuses prospective juror 115 based on statements made about a medical appointment.
		The Court addressed prospective jurors and inquires of any deferrals and hardship. (Caregivers).The Court addressed prospective juror 123 in

224	TRXTT	the audience and inquires. Prospective juror remains seated in the audience.
225	TRXTT	The Court addressed prospective jurors and inquires of any extreme financial hardship. There is no response to this inquiry.
226	TRXTT	The Court inquires of prospective jurors if anyone is not an Orange County resident. There is no response to this inquiry.
227	TRXTT	The Court inquires of prospective jurors seated in the jury box of prior jury service.
228	TRXTT	The Court read CALCRIM 103 to the prospective jurors.
229	TRXTT	The Court inquire of prospective jurors and asked if they can all be fair and unbiased in this case. There is no response.
230	TRXTT	Prospective juror 137 in seat 6 addressed the court and judge inquires. Prospective juror remains seated in seat 6.
231	TRVDE	Voir Dire examination commenced.
232	TRAPJ	At 03:41 PM, Court admonishes prospective jurors and declares a recess.
233	TRXTT	Prospective jurors approached the bailiff during recess. Deputy informed the court and counsel as to prospective juror #128 not feeling well. Counsel stipulates to excuse prospective juror #128. Deputy S. Garcia instructed to excuse prospective juror #128 and direct him to the Jury Assembly Room.
234	TRALP2	Again in open court at 03:57 PM. Defendant present with counsel. People duly represented. Jury is not present.
235	TRXTT	Court was informed by the Prosecutor that prospective juror 129 approached the Prosecutor during recess and was asked a question about scheduling. Defense Counsel was a witness to the conversation. Discussions held and parties agree to keep prospective juror 129 in seat 14. Reasons stated on record.
236	TRREC	At 03:59 PM, court declared a recess.
237	TRALP	Again in open court at 04:00 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
238	TRXTT	Court admonished jurors as to speaking to counsel during recess.
239	TRVDE	Voir Dire examination resumed.
240	TRXTT	Jurors are reseated in the jury box.
241	TRVDE	Voir Dire examination resumed.
242	TRXTT	Clerk calls one (1) prospective jurors to the jury box.
243	TRVDE	Voir Dire examination resumed.
244	TRCBR	At 04:37 PM, Court and Counsel confer at side bar with court monitor present.
245	TRXTT	Oral Motion by Defense to challenge for cause prospective juror number 133 in seat 2 was heard. People object. Argument heard and considered. Motion denied.
246	TRXTT	Oral Motion by Defense to challenge for cause prospective juror number 138 in seat 2 was heard. Motion granted.
247	TRXTT	Defense counsel requests prospective juror number 131 in seat 3 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 131.
248	TRXTT	People requests prospective juror number 105 in seat 14 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 105.
249	TRXTT	Defense counsel requests prospective juror number 137 in seat 6 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 137.
250	TRXTT	People requests prospective juror number 129 in seat 13 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 129.
251	TRALP	Again in open court at 04:49 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
252	OFBAL	Bailiff: N. Cafules
253	TRJXC	Court excused 1 prospective juror(s) for cause.
254	TRXTT	Clerk calls one (1) prospective jurors to the jury box.
255	TRVDE	Voir Dire examination resumed.
256	TRXTT	The Court addressed prospective juror number 123 in audience and inquires of her concern and hardship. (Caregiver). The court excuses prospective juror number 123 for hardship.
257	TRRTD	At 05:00 PM, Court admonished prospective jurors and declared a recess to reconvene on 03/23/2023 at 09:00 AM in Department C53 for Jury Trial.
258	TROPJ	Proceedings held outside the presence and hearing of the jurors.
259	TRXTT	Discussions held as to prospective juror number 109 in seat 18.
260	TRREC	At 05:12 PM, court declared a recess.

03/23/2023 1 HHELD Hearing held on 03/23/2023 at 09:00:00 AM in Department C53 for Jury Trial.

2 OFJUD Judicial Officer: H. Shaina Colover, Judge

3 OFJA Clerk: M. Ruiz

4 OFBAL Bailiff: S. Garcia

5 TRXTT Prior to jurors being present in the courtroom, roll call took place in the public hallway by Deputy S. Garcia.

6 TRPRT Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.

7 TRIOC In open court at 09:16 AM

8 APDDA People represented by MingMing Zhan, Deputy District Attorney, present.

9 APDWAL Defendant present in Court with counsel James Follett, Alternate Defender.

10 FITXT People's Proposed Jury Instructions. filed.

11 FIMTN Defense Motion to Dismiss (PC1385) filed.

12 TRREC At 09:21 AM, court declared a recess.

13 TRXTT Off the record discussions held.

14 TRALP2 Again in open court at 09:22 AM. Defendant present with counsel. People duly represented. Jury is not present.

15 TRXTT Court memorializes previous off the record discussions held this morning.

16 TRXTT Discussions held by both parties as to People v. Gonzalez, 12 Cal. 4th 804 (1996).

17 TRREC At 09:29 AM, court declared a recess.

18 TRXTT At 9:30 AM prospective jurors enter courtroom.

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19	TRIOC	In open court at 09:31 AM
20	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
21	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
22	TRPJP	Prospective jurors are present and in their proper places.
23	TRJXC	Court excused 1 prospective juror(s) for cause.
24	TRTXT	Clerk calls one (1) prospective jurors to the jury box.
25	TRVDE	Voir Dire examination resumed.
26	TRTXT	Voir Dire of prospective jurors conducted by the Defense.
27	TRTXT	The Court read CALCRIM 224 to the prospective jurors.
28	TRTXT	Voir Dire of prospective jurors conducted by the People.
29	TRAPJ	At 10:27 AM, Court admonishes prospective jurors and declares a recess.
30	TRALP2	Again in open court at 10:40 AM. Defendant present with counsel. People duly represented. Jury is not present.
31	TRTXT	Motion by Defense to excuse prospective juror number 133 seated in seat 2 for cause. Argument heard and considered. Motion granted.
32	TRTXT	Motion by the People to excuse prospective juror number 131 seated in seat 3 for cause. Argument heard and considered. Motion granted.
33	TRTXT	Motion by Defense to excuse prospective juror number 107 seated in seat 4 for cause. Argument heard and considered. Motion granted.
34	TRTXT	Motion by the People to excuse prospective juror number 137 seated in seat 6 for cause. Defense does not object. Motion granted.
35	TRTXT	Defense counsel requests prospective juror number 119 in seat 1 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 119 in seat 1.
36	TRTXT	Motion by the People to excuse prospective juror number 103 seated in seat 8 for cause. Argument heard and considered. Motion granted.
37	TRTXT	Defense counsel requests prospective juror number 110 in seat 10 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 110 in seat 10.
38	TRTXT	Both parties stipulate to excuse prospective juror number 129 in seat 3 for cause. Motion granted.
39	TRTXT	Motion by Defense to excuse prospective juror number 105 seated in seat 14 for cause. Argument heard and considered. Motion granted.
40	TRTXT	Both parties stipulate to excuse prospective juror number 127 in seat 17 for cause. Motion granted.
41	TRTXT	Defense counsel requests prospective juror number 100 in seat 15 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 100 in seat 15.
42	TRJYA	People accepted the jury as presently constituted.
43	TRPEC	Peremptory challenge exercised by Defense prospective juror number 119 in seat 1.
44	TRPECO	Objection by People, outside the presence of the jury to peremptory challenge of prospective juror # 119 pursuant to Code of Civil Procedure 231.7.
45	MOTION	Motion argued.
46	FDPECO	Court overrules objection to the improper exercise of a peremptory challenge by People pursuant to Code of Civil Procedure 231.7 and for the following reason(s): reasons as stated on the record
47	TRJYA	People accepted the jury as presently constituted.
48	TRPEC	Peremptory challenge exercised by Defense prospective juror number 116 in seat 7.
49	TRJYA	People accepted the jury as presently constituted.
51	TRPEC	Peremptory challenge exercised by Defense prospective juror number 100 in seat 15.
52	TRPECO	Objection by People, outside the presence of the jury to peremptory challenge of prospective juror # 100 pursuant to Code of Civil Procedure 231.7.
53	FDPECO	Court overrules objection to the improper exercise of a peremptory challenge by People pursuant to Code of Civil Procedure 231.7 and for the following reason(s): reasons as stated on the record.
54	TRJYA	People accepted the jury as presently constituted.
55	TRPEC	Peremptory challenge exercised by Defense prospective juror number 112 in seat 18.
56	TRPECO	Objection by People, outside the presence of the jury to peremptory challenge of prospective juror # 112 pursuant to Code of Civil Procedure 231.7.
57	FDPECO	Court overrules objection to the improper exercise of a peremptory challenge by People pursuant to Code of Civil Procedure 231.7 and for the following reason(s): reasons as stated on the record.
58	TRALP	Again in open court at 11:40 AM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
59	TRTXT	Court thanked and excused prospective jurors.
60	TRTXT	The Court excuses the following prospective jurors 119, 116, 100 and 112 - Peremptory challenges excercised by the Defense.
61	TRJXC	Court excused 8 prospective juror(s) for cause.
62	TRTXT	Jurors are reseated in the jury box.
63	TRTXT	Clerk calls twelve (12) prospective jurors to the jury box.
64	TRVDE	Voir Dire examination resumed.
65	TRAPJ	At 12:00 PM, Court admonishes prospective jurors and declares a recess.
66	TROPJ	Proceedings held outside the presence and hearing of the jurors.
67	TRTXT	Scheduling discussions held.
69	TRALP	Again in open court at 01:52 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
70	TRVDE	Voir Dire examination resumed.
71	TRJAP	Court read First Amended Complaint to the prospective jurors and advised them of the defendant's plea of not guilty thereto.
72	TRJXC	Court excused 1 prospective juror(s) for cause.
73	TRTXT	Jurors are reseated in the jury box.
74	TRTXT	Clerk calls one (1) prospective juror to the jury box.
75	TRVDE	Voir Dire examination resumed.
76	TRTXT	Voir Dire of prospective jurors conducted by the Defense.
77	TRTXT	Voir Dire of prospective jurors conducted by the People.
78	TRAPJ	At 03:04 PM, Court admonishes prospective jurors and declares a recess.

79	TROPJ	Proceedings held outside the presence and hearing of the jurors.	
80	TRXT	Both parties stipulate to excuse prospective juror number 104 in seat 14 for cause. Motion granted	
81	TRXT	Motion by Defense to excuse prospective juror number 114 seated in seat 6 for cause. Motion granted.	
82	TRXT	Both parties stipulate to excuse prospective juror number 110 in seat 10 for cause. Motion granted.	
83	TRJYA	People accepted the jury as presently constituted.	
84	TRPEC	Peremptory challenge exercised by Defense prospective juror number 134 in seat 8.	
85	TRPECO	Objection by People, outside the presence of the jury to peremptory challenge of prospective juror # 134 pursuant to Code of Civil Procedure 231.7.	
86	TRXT	Both parties stipulate to excuse prospective juror number 121 in seat 15 for cause. Motion granted.	
87	TRJYA	Both sides accepted the jury as presently constituted.	
88	TRREC	At 03:35 PM, court declared a recess.	
89	TRALP2	Again in open court at 03:46 PM. Defendant present with counsel. People duly represented. Jury is not present.	
90	CORAC	Court read and considered applicable law.	
91	FDPECO	Court overrules objection to the improper exercise of a peremptory challenge by People pursuant to Code of Civil Procedure 231.7 and for the following reason(s): reasons as stated on the record.	
92	TRREC	At 04:11 PM, court declared a recess.	
93	TRALP	Again in open court at 04:12 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.	
94	TRJXC	Court excused 4 prospective juror(s) for cause.	
95	TRXT	The Court excuses prospective jurors 134 in seat 8 - Peremptory challenges excercised by the Defense.	
96	TRXT	Jurors are reseated in the jury box.	
97	TRXT	The Court inquires of the prospective jurors in the jury box if there are any last-minute concerns before they are sworn in as jurors to hear this case. No concerns are expressed.	
98	TRXT	Clerk calls four (4) prospective juror to the jury box.	
99	TRVDA	Voir Dire examination for alternates commences.	
100	TRCBR	At 04:29 PM, Court and Counsel confer at side bar with court monitor present.	
101	TRXT	Counsel stipulate to the following prospective jurors as the 2 alternate jurors as follows: Prospective Juror number 118 as Alternate Juror number one (1). Prospective Juror number 135 as Alternate Juror number two (2).	
102	TRALP	Again in open court at 04:32 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.	
103	TRXT	Court inquires of alternate jurors before being sworn in as jurors in this case.	
104	TRJGB	Court thanked and excused remaining prospective jurors to Jury Assembly Room.	
105	TRIOC	In open court at 04:33 PM	
106	TRJCS	12 Jurors and 2 Alternates were sworn by the clerk to hear this matter. Disposition of panel jurors is reported on the random list and included by reference.	
107	TRRTD	At 04:36 PM, Court admonished sworn jurors and declared a recess to reconvene on 03/24/2023 at 10:00 AM in Department C53 for Jury Trial.	
108	TROPJ	Proceedings held outside the presence and hearing of the jurors.	
109	TRXT	Discussions held as to pending 402 Motions in Limine.	
110	TRXT	People object to Motion to Dismiss filed earlier this date.	
111	MOTION	Motion argued.	
112	TRXT	Defense states he didn't intended to file motion but rather wanted to file more of a brief rather than the motion to dismiss.	
113	DFOTR	Defendant ordered to appear.	
114	DSOCN	Defendant's release on own recognizance continued.	
115	TXKPW	Keep with companion cases(s) 19CM06724.	
116	TRREC	At 04:54 PM, court declared a recess.	
03/24/2023	1	HHELD	Hearing held on 03/24/2023 at 10:00:00 AM in Department C53 for Jury Trial.
	2	OFJUD	Judicial Officer: H. Shaina Colover, Judge
	3	OFJA	Clerk: M. Ruiz
	4	OFBAL	Bailiff: S. Garcia
	5	TRPR	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	6	TRIOC	In open court at 09:51 AM
	7	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	8	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	9	CORAC	Court read and considered Transcript for the intial Temporary Restraining Order dated 10/19/18.
	10	TRXT	Court and counsel resume 402 E.C. motions pending ruling as follows:
	11	CLXT	Peoples Motion in Limine Number Eleven (11).
	12	MOTBY	Motion by People to admit prior statements of defendant when offered against the defendant
	13	MOTION	Motion argued.
	14	MOTION	Motion granted.
	15	TRXT	As stated on the record.
	16	CLXT	Peoples Motion in Limine Number Twelve (12).
	17	MOTBY	Motion by People to exclude prior statements of the defendant when offered by the defense
	18	TRXT	Motion granted in accordance with the law. Reasons as stated on the record.
	19	CLXT	Peoples Motion in Limine Number Thirteen (13).
	20	MOTBY	Motion by People to admit (1) cerfified restraining order issued in 18V002374 and (2) minute order from July 29, 21 through judicial notice
	21	MOTION	Motion argued.
	22	TRXT	Court grants motion as modified on the record. Reasons as stated on the record.

23	CLTXT	Peoples Motion in Limine Number Fourteen (14).
24	MOTBY	Motion by People to introduce other acts of domestic violence evidence pursuant to evidence code section 1109
25	MOTION	Motion argued.
27	TRXTT	Court grants motion as modified on the record. Reasons as stated on the record.
28	COJNT	Court takes judicial notice of Minute Order 7/29/21 as to counts 2 and 3.
29	TRXTT	Court now hears defense pending 402 E.C. motions.
30	CLTXT	Defense Motion in Limine Number Eight (8).
31	MOTBY	Motion by Defense to require the Deputy District Attorney to disclose oral statements made to the prosecutor's office before or during trial by witnesses, including law enforcement witnesses.
32	MOTION	Motion argued.
33	TRXTT	Court grants motion and will rule in accordance with the law- reasons as stated on the record.
34	CLTXT	Defense Motion in Limine Number Nine (9).
35	MOTBY	Motion by Defense requests that all objections be federalized
36	TRXTT	Court will rule in accordance with the law- reasons as stated on the record.
37	CLTXT	Defense Motion in Limine Number Ten (10).
38	TRXTT	Court will rule in accordance with People's Eleven (11)- reasons as stated on the record.
39	CLTXT	Defense Motion in Limine Number Eleven (11).
40	TRXTT	Court will rule in accordance with People's Twelve (12)- reasons as stated on the record.
41	CLTXT	Defense Motion in Limine Number Twelve (12).
42	MOTBY	Motion by Defense moves to preclude any use by the prosecution of Ms. Lou's 19CM conviction to establish the element of control over the alleged postings
43	MOTION	Motion argued.
44	TRXTT	Court grants motion as modified on the record.
45	CLTXT	Defense Motion in Limine Number Thirteen (13).
46	MOTBY	Motion by Defense to preclude any acts of prior conduct pursuant to evidence code section 1101(b).
47	MOTION	Motion denied.
48	CLTXT	Defense Motion in Limine Number Fourteen (14).
49	MOTBY	Motion by Defense objects to any reference to Ms. Lou's past criminal history, including any open cases
50	TRXTT	Court will rule in accordance with People's Fourteen (14)- reasons as stated on the record.
51	CLTXT	Defense Motion in Limine Number Twenty Four (24).
52	MOTBY	Oral motion by Defense request that the court not allow the mention of conversation between previous defense counsel and detective Ruvalcaba as to the defendant's 5th Amendment Right.
53	MOTION	Motion granted.
54	TRREC	At 11:30 AM, court declared a recess.
55	TRXTT	Prior to jurors being present in the courtroom, roll call took place in the public hallway by Deputy S. Garcia.
56	TRIOC	In open court at 11:38 AM
57	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
58	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
59	TRJP	Sworn jurors are present and in their proper places.
60	TRXTT	The Court reads Pre-Trial Cal Crim 100 series to the Jury.
61	TRXTT	The Court reads Cal Crim Jury Instruction regarding Presumption of Innocence and the People's Burden of Proof to the prospective jurors.
62	TRXTT	The Court advises the jurors as to the process of opening statements.
63	TROSB	Opening statement by People given.
64	TROSB	Opening statement by Defense given.
65	TRXTT	Court read Cal Crim 124- Separation Admonition to the sworn jury.
66	TRREC	At 12:00 PM, court admonished jurors and declared a recess.
67	TRALP	Again in open court at 01:45 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
68	TRWST	Witness, Brenda Ruvalcaba, Investigator with Santa Ana Police Department, sworn and testified.
69	TRCBR	At 01:54 PM, Court and Counsel confer at side bar with court monitor present.
70	TRXTT	Discussions held as to direct examination of witness and the word "victim" being used on direct. As stated on the record.
71	TRWRT	Brenda Ruvalcaba, previously sworn, resumes testimony.
72	STRHRG	Start of Exhibit List: for exhibit management purposes.
73	TREXI	People's Exhibit # 1 (Document(s)) - DV-130 Restraining Order After Hearing. Case Number 18V002374- filed 10/1/21 marked for identification.
74	MOTBY	Oral motion by People to admit People's Exhibit 1 into evidence
75	MOTION	Motion granted.
76	TREXE	People's Exhibit # 1 received into evidence.
77	TREXI	People's Exhibit # 2 (Document(s)) - Multiple page document dated 3/21/23 titled gorgeouspainting with various color copy photographs of a male, and copies of text messages marked for identification.
78	TREXS	Court orders People's Exhibit # 2 sealed.
79	TRCBR	At 02:18 PM, Court and Counsel confer at side bar with court monitor present.
80	TRALP	Again in open court at 02:22 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
81	TRWRT	Brenda Ruvalcaba, previously sworn, resumes testimony.
82	TREXI	People's Exhibit # 2A (Document(s)) - Multiple page document dated 3/21/23 titled gorgeouspainting with various color copy photographs of a male, and copies of text messages with redacted portions marked for identification.
83	MOTBY	Oral motion by People to admit People's Exhibit 2A into evidence

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84	MOTION	Motion granted.	
85	TREXE	People's Exhibit # 2A received into evidence.	
86	TREXI	People's Exhibit # 3 (Document(s)) - YouTube website B Ph @pph7278 No videos Tomas Czodor marked for identification.	
87	TREXS	Court orders People's Exhibit # 3 sealed.	
88	TREXI	People's Exhibit # 3A (Document(s)) - YouTube website B Ph @pph7278 No videos Tomas Czodor- redacted copy marked for identification.	
89	MOTBY	Oral motion by People to admit People's Exhibit 3A into evidence	
90	MOTION	Motion granted.	
91	TREXE	People's Exhibit # 3A received into evidence.	
92	TRXTT	Cross examination conducted on behalf of the Defense..	
93	MOTBY	Oral motion by People to admit People's Exhibit 3A into evidence.	
94	MOTION	Motion granted.	
95	TRCBR	At 02:41 PM, Court and Counsel confer at side bar with court monitor present.	
96	TRXTT	Discussions held as to Defense inquiry of a YOUTUBE link.	
97	TRALP	Again in open court at 02:43 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.	
98	TRXTT	Cross examination resumes.	
99	TRXTT	Re-direct conducted on behalf of the People.	
100	TRREC	At 02:58 PM, court admonished jurors and declared a recess.	
101	TROPJ	Proceedings held outside the presence and hearing of the jurors.	
102	TRREC	At 03:08 PM, court declared a recess.	
103	TRXTT	Juror number 108 in seat 11 approached the bailiff during recess. Deputy informs the court and counsel that he indicated the court and counsel were speaking too fast and could like to know if it's okay to ask questions or to repeat if they can't hear or understand the proceedings.	
104	TRALP	Again in open court at 03:21 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.	
105	TRXTT	Court addressed the jury and advised them to raise their hand if they need anything repeated.	
106	TRXTT	Re-direct resumes on behalf of the People.	
107	TRXTT	Re-cross on behalf of the Defense.	
108	TRCBR	At 03:28 PM, Court and Counsel confer at side bar with court monitor present.	
109	TRXTT	Discussions held as to statements made by the witness on re-cross.	
110	TRALP	Again in open court at 03:31 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.	
111	TRXTT	Re-cross on behalf of the defense resumes.	
112	TRWER	Brenda Ruvalcaba excused subject to recall.	
113	TRRTD	At 03:45 PM, Court admonished sworn jurors and declared a recess to reconvene on 03/27/2023 at 09:15 AM in Department C53 for Jury Trial.	
114	TROPJ	Proceedings held outside the presence and hearing of the jurors.	
115	TRXTT	Discussions held as to jury instructions.	
116	DFOTR	Defendant ordered to return.	
117	DSOCN	Defendant's release on own recognizance continued.	
118	TRREC	At 03:52 PM, court declared a recess.	
119	TXKPW	Keep with companion cases(s) 19CM06724.	
03/27/2023	1	HHELD	Hearing held on 03/27/2023 at 09:15:00 AM in Department C53 for Jury Trial.
	2	OFJUD	Judicial Officer: H. Shaina Colover, Judge
	3	OFJA	Clerk: M. Ruiz
	4	OFBAL	Bailiff: S. Garcia
	5	TRXTT	Prior to jurors being present in the courtroom, roll call took place in the public hallway by Deputy S. Garcia.
	6	TRPR	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	7	TRIOC	In open court at 09:38 AM
	8	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	9	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	10	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	11	FITXT	Proposed Jury Instruction submitted by the Defense filed.
	12	FITXT	Proposed Jury Instructions filed.
	13	TRRJI	Court and Counsel review jury instructions with court monitor present.
	14	TRREC	At 09:49 AM, court declared a recess.
	15	TRXTT	Sworn jurors enter courtroom at 9:49 AM.
	16	TRIOC	In open court at 09:50 AM
	17	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	18	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	19	TRPJP	Sworn jurors are present and in their proper places.
	20	TRWST	Witness, Tomas Czodor, victim, sworn and testified.
	21	TRWID	Witness identified the defendant.
	22	TREXI	People's Exhibit # 4 (Document(s)) - DV-130 Restraining Order 18V002374 marked for identification.
	23	MOTBY	Oral motion by People to admit People's 4 into evidence.
	24	MOTION	Motion granted.
	25	TREXE	People's Exhibit # 4 received into evidence.
	26	COJNT	Court takes judicial notice of case 19CM06724.

#2708

27	COJNT	Court takes judicial notice of prior convictions.
28	TRCBR	At 10:29 AM, Court and Counsel confer at side bar with court monitor present.
29	TRXT	Discussions held as to prior conviction/charges and requests court admonish the sworn jurors.
30	TRALP	Again in open court at 10:32 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
31	TRWRT	Tomas Czodor, previously sworn, resumes testimony.
32	TRREC	At 10:47 AM, court admonished jurors and declared a recess.
33	TRALP	Again in open court at 11:04 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
34	TRXT	Cross examination conducted on behalf of the Defense.
35	TRCBR	At 11:11 AM, Court and Counsel confer at side bar with court monitor present.
36	TRXT	Discussions held regarding legal definition/witness opinion.
37	TRALP	Again in open court at 11:19 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
38	TRWRT	Tomas Czodor, previously sworn, resumes testimony.
39	TRCBR	At 11:20 AM, Court and Counsel confer at side bar with court monitor present.
40	TRXT	Discussion held as to defendant's marital status/352 issue- Court will allow limited inquiry.
41	TRALP	Again in open court at 11:25 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
42	TRWRT	Tomas Czodor, previously sworn, resumes testimony.
43	TRXT	Re-direct conducted by the People.
44	TRXT	Re-cross by the Defense.
45	TRWER	Tomas Czodor excused subject to recall.
46	TRCBR	At 11:53 AM, Court and Counsel confer at side bar with court monitor present.
47	TRXT	Discussions held as to scheduling.
48	TRALP	Again in open court at 11:54 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
49	TRPRS	People rest(s)
50	TRREC	At 11:56 AM, court admonished jurors and declared a recess.
51	TROPJ	Proceedings held outside the presence and hearing of the jurors.
52	TRXT	Scheduling discussions.
53	CORAC	Court read and considered proposed jury instruction of Lawful Issuance of the Order.
54	TRREC	At 12:00 PM, court declared a recess.
55	TRXT	Informal off the record discussions on jury instructions held.
56	TRIOC	In open court at 01:55 PM
57	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
58	APNDC	Defendant not present in Court represented by James Follett, Alternate Defender.
59	WV977	Defendant's appearance is waived pursuant to Penal Code 977(a).
60	TRRJI	Court and Counsel review jury instructions with court monitor present.
61	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
62	MOTBY	Oral motion by Defense pursuant to 1118. PC
63	MOTION	Motion argued.
64	MOTDD	Defense motion pursuant to Penal Code 1118 denied.
65	TRXT	Reasons as stated on the record.
66	TRREC	At 03:21 PM, court declared a recess.
67	TRALP2	Again in open court at 03:45 PM. Defendant present with counsel. People duly represented. Jury is not present.
68	TRRJI	Court and Counsel review jury instructions with court monitor present.
69	TRXT	Court addressed defendant with regards to testifying.
70	ADVISE	Defendant advised of the following:
71	WVRMS	- The right to remain silent.
72	WVRTF	- The right to testify in own defense.
73	WVRTT	The right not to testify, be called as a witness, or admit guilt.
74	FIGJI	Jury Instructions Withdrawn filed.
75	TRREC	At 03:51 PM, court declared a recess.
76	TRALP	Again in open court at 03:53 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
77	TRDRS	Defense rests.
78	TRCRI	The Court read the Instructions to the Jury.
79	FIGJI	Jury Instructions Given filed.
80	TRRTD	At 04:18 PM, Court admonished sworn jurors and declared a recess to reconvene on 03/28/2023 at 09:15 AM in Department C53 for Jury Trial.
81	DFOTR	Defendant ordered to return.
82	TRXT	Parties agree that tomorrow both will present closing arguments and People will present rebuttal.
83	DSOCN	Defendant's release on own recognizance continued.
84	TXKPW	Keep with companion cases(s) 19CM06724.
03/28/2023	1 HHELD	Hearing held on 03/28/2023 at 09:15:00 AM in Department C53 for Jury Trial.
	2 OFJUD	Judicial Officer: H. Shaina Colover, Judge
	3 OFJA	Clerk: M. Ruiz
	4 OFBAL	Bailiff: S. Garcia
	5 TRXT	Prior to jurors being present in the courtroom, roll call took place in the public hallway by Deputy S. Garcia.
	6 TRXT	Sworn jurors enter courtroom at 9:34 AM.

	7	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	8	TRIOC	In open court at 09:34 AM
	9	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	10	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	11	TRJPJ	Sworn jurors are present and in their proper places.
	12	TRCLA	Closing argument presented on behalf of the People.
	13	TRCLA	Closing argument presented on behalf of the Defense.
	14	TRRBA	Rebuttal argument presented on behalf of the People.
	15	TRXTT	Court reads CAL CRIM 3550 to sworn jury.
	16	FITXT	Clean copy of Jury Instructions Given filed.
	17	TRJRT	At 11:09 AM, the Jury retired to the jury room to deliberate in charge of Deputy S. Garcia duly sworn for that purpose.
	18	TRAOC	Court admonishes alternate juror(s) and pursuant to stipulation of counsel releases the alternate(s) on one hour call.
	19	TRAJR	Counsel stipulates that the alternate juror(s) may go home or to work. The Court admonishes the alternate juror(s) and releases them subject to their remaining in telephone contact with the bailiff for the duration of the jury's deliberation.
	20	TRXTT	Alternate jurors need not remain in the courtroom during deliberations but will be subject to telephonic recall as needed.
	21	TRXTT	Following submission of the case to the jury, counsel will be available by phone and will return to the courtroom within 30 minutes of being called.
	22	TRJBR	At 11:50 AM, jurors left the jury room for lunch recess.
	23	TRJRD	At 01:34 PM, jurors returned to the jury room to resume deliberations.
	24	TRXTT	Question Number One (1).
	25	TRWRJ	At 02:05 PM, the jury submitted the following written request: "We, the jury in the above entitled action request the following: -Copy of transcript Mr. Czodor was requested to read from DA: Def. -List of websites Mr. Czodor alleges were created by Def. -Add'l copies of Exhibits., /s/Juror # 113, Foreperson." Counsel were notified. Request filed and incorporated herein by reference.
	26	TRIOC	In open court at 02:25 PM
	27	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	28	APNDC	Defendant not present in Court represented by James Follett, Alternate Defender.
	29	TRXTT	Discussions held as to Question 1 submitted by the sworn jurors.
	30	TRREC	At 02:33 PM, court declared a recess.
	31	FITXT	Original Court? Response to Question One (1) submitted at 2:05 PM. filed.
	32	TRWRS	At 02:36 PM the following written response was sent to the jury: -as to part 1 and 2, if it was not admitted into evidence, it does not go back to the "jury deliberation room. (You can listen to playback of any portion of the trial testimony you would find helpful.)* -as to part 3 - the actual exhibits are back in the jury deliberation room already, no additional copies will be provided. *as requested the websites, please remember, you are not to look anything up online whatsoever.
	33	TRXTT	At 3:52 PM, jurors inform bailiff that the jury has reached a verdict.
	34	TRXTT	At 3:52, District Attorney MingMing Zhan & Deputy Public Alternate Defender James Follett were notified telephonically that a verdict has been reached and to report to Department C53 forthwith.
	35	TRIOC	In open court at 04:13 PM
	36	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	37	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	38	TRXTT	All parties are ready to receive jury verdict.
	39	TRXTT	Court asks deputy to bring in the jury.
	40	TRXTT	At 4:14 PM, the Jury enters courtroom.
	41	TRJPJ	Sworn jurors are present and in their proper places.
	42	TRIOC	In open court at 04:15 PM
	43	TRXTT	Court inquires who the foreperson is. Juror number 122 in seat 5 answers in the affirmative.
	44	TRXTT	The court addresses the foreperson regarding reaching of verdicts. The foreperson states they have reached verdicts. The bailiff retrieves the verdicts and finding forms and gives them to the court.
	45	TRXTT	The court received and reviewed jury verdicts and finding forms. The clerk read the following:
	46	FDJNC	VERDICT: We the jury in the above entitled action find the defendant NOT GUILTY as to count 1 as charged in the First Amended Complaint. Juror # 122, Foreperson. Verdict read, filed, and incorporated herein by reference.
	47	TRJPV	To the question, "Ladies and gentlemen of the jury are these your verdict(s)?" the jury answered in the affirmative. The jury was polled by the clerk. To the question: "Are these your verdict(s)?" each of the jurors answered individually in the affirmative. The clerk was ordered to record the verdict(s).
	48	TRXTT	Court read final jury instruction CALCRIM No. 3590 to sworn jurors on the Discharge of Jury.
	49	TRJTE	Court thanked and excused the Jury.
	50	TRJIS	Pursuant to Code of Civil Procedure 237(a)(2), all juror identifying information ordered sealed and filed.
	51	FIJIS	Packet of unfiled documents containing confidential juror information is filed and sealed pursuant to Code of Civil Procedure 237(a)(2).
	52	TRAEX	Alternate juror(s) notified by telephone and excused.
	53	TRACD	Actual days of trial: 5 days.
	54	TRXTT	Proceedings ended and all parties exit the courtroom at 4:15 PM.
	55	FITXT	Redacted Written Request from Jury filed.
	56	FITXT	Redacted verdict form count 1 filed.
	57	FITXT	Unsigned verdict form filed.
	58	ENDHRG	End of Exhibit List: for exhibit management purposes.
03/29/2023	1	CSCLS	Case closed.
04/10/2023	1	FITXT	Defendant's Request for Record filed.

#2710

04/11/2023	1	CSCLS	Case closed.
04/26/2023	1	FIDOC	Exhibit List of People filed.
04/27/2023	1	CSCLS	Case closed.
05/17/2023	1	TXRNF	Second Request and Order Produce Record received, not filed.
05/18/2023	1	CSCLS	Case closed.
05/19/2023	1	DFS851	Electronic notice has been received from the Department of Justice that relief has been GRANTED pursuant to Penal Code 851.93. Information regarding the granting of relief shall not be disclosed except to the person to whom relief was granted, or a Criminal Justice Agency as defined in Penal Code section 851.92. Case is sealed.
05/20/2023	1	CSCLS	Case closed.
06/22/2023	1	TXRFR	Case referred to C56 for review.
	2	TEXT	Second Request and Order Produce Record referred to chambers after PC 851.93 Sealing completed as this filing was originally received prior to granting of PC 851.93 sealing.
06/23/2023	1	CSCLS	Case closed.
07/24/2023	1	HHELD	Hearing held on 07/24/2023 at 09:00:00 AM in Department C56 for Chambers Work.
	2	OFJUD	Judicial Officer: Cynthia M Herrera, Judge
	3	OFJA	Clerk: M. Diaz
	4	APNAP	No appearance by parties.
	5	CORAC	Court read and considered Second Request and Order Produce Record.
	6	TEXT	Court rules as follows:
	7	TEXT	Defendant's motion for transcript to be provided at no cost to Defendant is DENIED.
07/25/2023	1	CSCLS	Case closed.
	2	CPGTO	Copy of Minute Order mailed to Defendant.
07/26/2023	1	CSCLS	Case closed.

1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

3 12/30/2022
4 10:17 AM

5 DAVID H. YAMASAKI, Clerk of the Court
6 23CM00067

7 THE PEOPLE OF THE STATE OF CALIFORNIA,) COMPLAINT
8) BWC AGENCY

9 Plaintiff,)
10)
11)
12 vs.)
13)
14) No.
15 XINGFEI LUO [REDACTED]) SAPD 22-09260
16 F [REDACTED]) DOMESTIC VIOLENCE
17 AKA XINGFEI LOU)
18)
19)
20)
21 Defendant(s))

22 The Orange County District Attorney charges that in Orange
23 County, California, the law was violated as follows:

24 COUNT 1: On or about April 20, 2022, in violation of Section
25 273.6(a) of the Penal Code (VIOLATION OF A PROTECTIVE ORDER), a
26 MISDEMEANOR, XINGFEI LUO did intentionally, knowingly, and
27 unlawfully violate an order issued pursuant to Family Code
28 sections 6320 and 6389 by contacting protected party through
online means.

I declare under penalty of perjury, on information and belief,
that the foregoing is true and correct.

Dated 12-30-2022 at Orange County, California.
SA/CM 22C07939

TODD SPITZER, DISTRICT ATTORNEY

by: /s/ SHABNUM AZIZI

SHABNUM AZIZI, Deputy District Attorney

/

XINGFEI LUO SAPD 22-09260 PAGE 2

1 RESTITUTION CLAIMED

2 [] None

3 [] \$_____

4 [X] To be determined

5 NOTICES:

7 The People request that defendant and counsel disclose, within
8 15 days, all of the materials and information described in Penal
9 Code section 1054.3, and continue to provide any later-acquired
materials and information subject to disclosure, and without
further request or order.

10 The People intend to proceed pursuant to Evidence Code sections
11 1101(b), 1107, 1109, and 1370.

13 Pursuant to Welfare & Institutions Code §827 and California Rule
14 of Court 5.552, notice is hereby given that the People will seek
15 a court order to disseminate the juvenile case file of the
defendant/minor, if any exists, to all parties in this action,
16 through their respective attorneys of record, in the prosecution
of this case.

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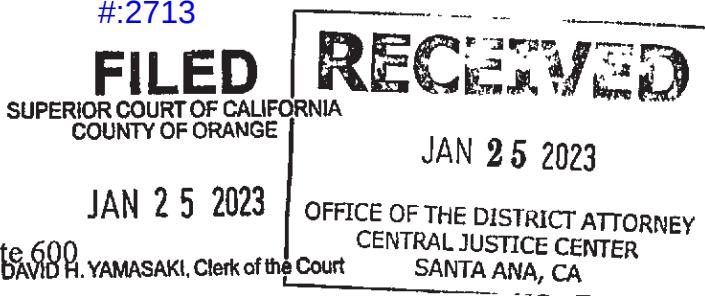
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1 FRANK DAVIS
2 Alternate Public Defender
3 Marian Mikhail
4 Deputy Alternate Defender
5 600 W. Santa Ana Blvd., Suite 600
Santa Ana, CA 92701
Fax: (714) 835-8400
6 Attorneys for Defendant

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

10 PEOPLE OF THE STATE OF CALIFORNIA,

) Case No.: 23CM00067

11 Plaintiff,

) NOTICE OF MOTION; MOTION TO
12) DISMISS PURSUANT TO U.S. AND
vs.) C.A. DUE PROCESS FOR
XINGFEI LUO,) INSUFFICIENT NOTICE OR
13) PLEADING; OR IN THE
Defendant.) ALTERNATIVE, PURSUANT TO
14) PENAL CODE SECTION 1004.

15 TO: ORANGE COUNTY DISTRICT ATTORNEY,

16 PLEASE TAKE NOTICE that on February 7, 2023, at 1:30 p.m. in Department C47 of
the above-entitled court, Defendant will move the court for an order dismissing the complaint on the
17 ground that her right to a speedy trial has been violated.

18

19 MOTION

20 The Defendant challenges the facial sufficiency of the criminal complaint, before an entry of
21 plea has been submitted, and hereby moves the court for an order dismissing the complaint pursuant
22 to the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 15, of the
23 California Constitution, as it cannot even comply with Section 1004 of the California Penal Code.
24 This motion is based on these moving papers, the court minutes, and any argument made at the
25 hearing.

MEMORANDUM OF LAW

I. THE FACIAL SUFFICIENCY OF A CRIMINAL COMPLAINT IS DEFICIENT WHEN IT VIOLATES DUE PROCESS AND/OR PENAL CODE SECTION 1004.

The function of criminal pleadings is to give an accused adequate notice of the charges against him. *People v. Gallego*, 52 Cal. 3d 115 (1990); *Cole v. State of Ark.*, 333 U.S. 196 (1948); *In re Oliver*, 333 U.S. 257 (1948); *People v. Pond*, 44 Cal. 2d 665 (1955). A criminal complaint must be filed to comply with Due Process, speedy trial requirements, and statute of limitations. U.S. Const. Amend. VI and XIV; Cal. Const. Art. I, §15; Pen. Cod. §§ 799–80. *Garland v. Washington*, 232 U.S. 642 (1914) (explaining that while States have wide latitude to develop their own criminal procedures, they must still afford the accused this basic Constitutional right).

In California, statutory law also permits a defendant to also challenge the facial sufficiency of a complaint by way of demurrer under Penal Code Section 1004. *See People v. Zamora*, 18 C3d 538, 542 (1976). A demurrer challenges the defects that appear on the face of the accusatory pleading. A defendant can demur to an accusatory pleading instead of entering a plea. The only grounds allowed to be raised by demurrer are the 5 specific ones set forth in Pen. Code, § 1004:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, or, if an information or complaint that the court has no jurisdiction of the offense charged therein;
2. That the accusatory pleading does not substantially conform to the provisions of Pen. Code, §§ 950, 952, and also Pen. Code, § 951 in case of an indictment or information;
3. That more than one offense is charged, except as provided in Pen. Code, § 954;
4. That the facts stated do not constitute a public offense; and
5. That the accusatory pleading contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

Because the purpose of the legal accusatory instrument is to provide notice, bare literal compliance with Pen. Code, § 952 is insufficient to overcome a demurrer and faces due process

1 attack under law because pleading the words of the statute is insufficient to give constitutionally
2 adequate notice of the offense. *See Choung v. People of State of Cal.*, 320 F. Supp. 625, 628-29
3 (E.D. Cal. 1970) (explaining that although California permits its accusatory pleadings to be worded
4 in the language of the statute under Penal Code Section 952, it must still survive a Due Process
5 attack only if the language of the statute from which it is taken sets forth fully, directly, and
6 expressly all essential elements of the crime); *see also Lott v. United States*, 309 F.2d 115 (5th Cir.
7 1962) (“It is true that offenses must be accurately described in an indictment; and if necessary to do
8 so, the allegations must be expanded beyond the words of the statute in order to embrace all the
9 ingredients necessary to the offense.”).

10 **Therefore, “[a]n accusatory pleading must be more specific than a statute which**
11 **defines a material element of the offense by a blanket reference to other forbidden acts.”**
12 *Choung v. People of State of Cal.*, at 629. In *Choung*, via writ of habeas corpus, the court held a
13 California complaint alleging violation of Penal Code Section 602.9 that was framed substantially
14 in the terms of the statute failed a Due Process attack for its lack of specificity, ultimately failing to
15 adequately inform the accused of the charge. *Id.* at 628-631. In *Choung*, the complaint under attack
16 read as follows:

17 That on the 22nd day of March, 1968, and within limits of the City of
18 Sacramento, in the County of Sacramento, in the State of California
19 the said Defendants above named did then and there, before the filing
20 of this complaint, and within one year prior thereto, willfully and
21 unlawfully come into a school building, to wit: Sacramento Senior
22 High School and upon the school grounds adjacent thereto without
23 lawful business therein or thereon and did, by the presence and acts of
24 them and each of them interfere with the peaceful conduct of the
25 activities of said school and did disrupt said school and its pupils and
26 the activities of said school, and said Defendants and each of them did
27 remain in said school building and upon said school grounds after
28 being asked to leave by the chief administrative official of said
school, to wit: ULRIC MORLEY. * * *

1 The Court held “I rule that the phrase ‘without lawful business therein or thereon’ renders the
2 complaint too vague to notify petitioner of the specific charge to be defended, in violation of the
3 Constitution.” *Id.* at 628. The Court explained that although the purpose for which the
4 petitioner entered the campus was a crucial element of the offense, the complaint did not explain
5 which statute or regulation, among a potentially infinite number, the petitioner intended to violate,
6 leaving the prosecution the prosecution free to roam at large—to shift its theory of criminality so as
7 to take advantage of each passing vicissitude of the trial and appeal. *Id.* at 630 (citing) (*Russell v.*
8 *United States*, 369 U.S. 749 (1962); *see also People v. Puckett*, 44 Cal. App. 3d 607 (Ct. App. 1975)
9 (holding a person cannot be convicted of an offense not charged against him in the indictment or
10 information, regardless of whether or not there was evidence at trial to show that the defendant
11 committed the offense)).
12

13 In *Chuong*, the Court relied on examples like, in *Babb v. United States*, where the court held
14 “that an indictment charging the defendant with transporting cattle and knowing them to have been
15 imported ‘contrary to law’ was fatally defective for failing to allege ‘some fact or facts showing that
16 the cattle in question were imported or brought in contrary to some law; and that it is not enough to
17 say that they were imported or brought in ‘contrary to law.’” 218 F.2d 538 (5th Cir. 1955). *See*
18 *also Steiner v. United States*, 229 F.2d 745 (9th Cir. 1956). The Court also relied on cases like *State*
19 *v. Elkins*, 216 Or. 509, 339 P.2d 715 (1959), where “the Supreme Court of Oregon sustained a
20 demurrer to an indictment, charging maintenance of an establishment where persons congregated
21 for the purpose of ‘unlawfully’ drinking liquor on the ground that it failed to inform the defendants
22 of the crime with which they were charged, since it did not disclose in what particular the patron’s
23 acts were contrary to statute.”
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1 Therefore, it may not be sufficient to just mirror a statute's elements, especially when a
2 material element is alleged. To survive Due Process, the complaint must give the accused sufficient
3 notice of what was allegedly done in order to adequately defend him/herself at trial. *Sheppard v.*
4 *Rees*, 909 F.2d 1234 (9th Cir. 1989) (holding there was a Sixth Amendment violation that was not
5 harmless error when a California defendant was not given adequate notice of the information, when
6 the prosecution only alleged violation of Penal Code Section 187, murder, without making any
7 reference in the information to felony murder or robbery as an underlying charge, ultimately
8 affecting the defendant's ability to defend himself against such theory at trial).
9
10

ARGUMENT

I. THE ACCUSATORY PLEADING HEREIN DOES NOT ADEQUATELY ADVISE THE DEFENDANT OF THE CHARGES UNDER DUE PROCESS OF THE C.A. AND U.S. CONSTITUTIONS.

14 A fundamental principle of due process of law requires that the accused in a state or federal
15 prosecution be informed in advance of trial of the specific charges that he must defend. First, the
16 criminal complaint fails to provide any factual details to ascertain what *active and lawful* order was
17 violated. Second, it fails to provide any name or identifying markers of who the protected party is in
18 order to inform whether Ms. Luo is actually restrained from said "protected person." Third, it does
19 not provide any factual bases to inform the accusation of how Ms. Luo acted "unlawfully,
20 intentionally, and knowingly" in violation of the unknown order. Lastly, it fails to explain how
21 "online means" translates into specific conduct that would result in criminal liability in Orange
22 County, California to sustain jurisdiction. A general allegation of "contact" by "online means"
23 provides no context or clue as to what Ms. Luo allegedly did or how Ms. Luo effectuated a violation
24 through the World Wide Web. Without understanding what "means" were taken, Ms. Luo has not
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1 been informed as to what action was taken in violation of said unknown order to effectively defend
2 herself at trial.

3 Because the complaint provides no information as to who was harmed, under what court
4 order, and specifically how and what “intentional, unlawful and knowingly” conduct was taken to
5 be in violation of Penal Code Section 273.6—all of which Ms. Luo is entitled to notice of in order
6 to defend herself at trial—the complaint cannot withstand Due Process and must be dismissed.
7

8 **II. IN ADDITION TO DUE PROCESS, THE ACCUSATORY PLEADING HEREIN
9 DOES NOT ADEQUATELY ADVISE THE DEFENDANT OF THE CHARGES
10 PURSUANT TO CALIFORNIA PENAL CODE 1004(2)’S MINIMAL PLEADING
REQUIREMENTS.**

11 Here, the criminal complaint does not even meet the bare minimum pleading requirements
12 of Penal Code Section 1004(2). It specifically fails to comport with Penal Code Section 952. Ms.
13 Luo is charged with Penal Code Section 273.6. Such an offense requires the prosecution to allege
14 that:

16 a) a court lawfully issued a written order restraining the defendant;
17 b) the court order was a [protective/stay away/insert type] order,
18 under [the code section under which the order was made];
19 c) the defendant knew of the court order;
20 d) the defendant had the ability to follow the court order; and
21 e) the defendant willfully/intentionally violated the order.

23 See Judicial Council Of California Criminal Jury Instruction 2701.

24 As discussed in Section I of the Argument, the complaint does not even allege what lawful
25 court order is at issue. The complaint fails to allege the type of order that is at issue. The complaint
26 fails to allege the specific conduct that resulted in knowing and willful or intentional violation of the
27
28

1 order, along with the ability to follow the order. Generally allegation of "contact" by "online
2 means" does not inform Ms. Luo of the impossibly conduct that is at issue for her to defend herself
3 at trial. For these reasons, the complaint fails under statutory law that the Court should sustain a
4 demurrer. And even if the court were to find the pleading in compliance with Penal Code Section
5 1004(2), it does not survive Due Process under law. *See supra*, Argument I.

7 **CONCLUSION**

8 For the foregoing reasons, the Court should grant the defense's request and dismiss the
9 complaint against Ms. Luo under due process of law, as it fails to comply with pleading standards
10 under the California and United States Constitution, along with minimum requirements set forth in
11 Penal Code Section 1004.

12
13 DATED: January 25, 2023

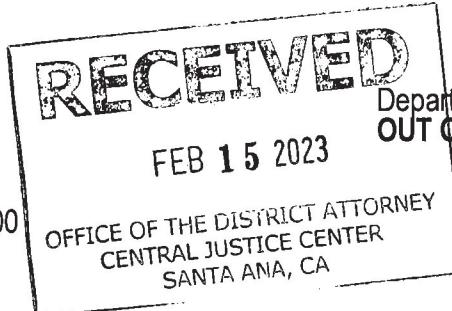
14 Respectfully submitted,
FRANK DAVIS, Alternate Public Defender

15
16 

17
18 Marian Mikhail
19 Deputy Alternate Defender
Marian.mikhail@ocaltdef.com

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1 FRANK S. DAVIS
2 Alternate Public Defender
3 MARIAN MIKHAIL
4 Deputy Alternate Defender
5 600 W. Santa Ana Blvd., Suite 600
Santa Ana, CA 92701
Telephone: (657) 251-6730
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Department: C47
OUT OF CUSTODY
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

FILED

FEB 15 2023

DAVID H. YAMASAKI, Clerk of the Court

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 CENTRAL JUSTICE CENTER

BY: G. YANG DEPUTY

7 PEOPLE OF THE STATE OF CALIFORNIA

} Case No.: 23CM00067

8 Plaintiff,

REQUEST FOR DISCOVERY

9 v.

10 Luo, Xingfei,

11 Defendant.

12 TO: ORANGE COUNTY DISTRICT ATTORNEY

13 PLEASE TAKE NOTICE that Defendant is requesting pre-hearing discovery pursuant to Defendant's
14 rights under applicable statutory law and under the state and federal Constitutions (P.L. §§ 1054.1 and 1054.4;
15 *Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 378; *People v. Hayes* (1992) 3 Cal.App.4th 1238, 1244-
16 1246). This is a continuing request: please provide any later acquired or discovered information and materials
17 as promptly as possible.

18 Please provide all materials described below with respect to any events or circumstances to be
19 introduced per Evidence Code §§ 1101(b), 1105, 1107, 1109, and/or 1370. Please provide all of the following
20 items and information, in each case *regardless* of whether the People intend to use such information:

21 (1) For the period from the time the police initiated their investigation of this case until the end of that initial
22 investigation, certified copies of (i) dispatch tapes and officer chat logs (recordings of any radio, phone, or
23 "green channel" or other color channel communications, email/instant messaging/chat messages, or other
24 oral or written communications among officers in the field and/or dispatch), (ii) incident log (computer history
25 printout documenting the chronological sequence of events that occurred including times when police were
26 called, when each officer was dispatched to and actually arrived on the scene, and when any witnesses were
27 contacted and interviewed), (iii) computer history printout documenting all inquiries and responses to those
28

1 inquiries (with time stamps) from the mobile data terminals or other onboard computers of each police officer
2 and each police vehicle involved from 10 minutes prior to arrival on scene until 30 minutes after clearing the
3 scene, and (iv) any 911 or other informant calls;

4 (2) Police, social services, and other law enforcement reports prepared in connection with the pending
5 matter in relation to the investigation and prosecution of this case or to the Defendant or to the facts and
6 circumstances of this case, including in each instance all ancillary and supplemental reports, all attachments,
7 property and evidence logs and receipts, probable cause declarations, and rough or other field notes for
8 each);

9 (3) All crime scene investigation including photographs, videos, and diagrams of crime scene, as well as
10 all other photographs (including digital copies) of the victim, contraband or booking, and any photos, lineups
11 or sketches shown to witnesses provided in their original state, i.e. color;

12 (4) With regard to statements of, conversations with and actions of witnesses, victims, any prior or current
13 suspect in this case, and/or any other persons interviewed by any investigating authority in connection with
14 the pending matter: all audio and/or video tapes or digital recordings (including stationhouse, personal DAR
15 or other recorders, MAV/PVS/car mounted, body cameras, and all other electronic surveillance or tapings),
16 together with notes and full disclosure of any oral communication (*People v. Campbell* (1972) 27 Cal.App.3d
17 849; *Roland v. Superior Court* (2004) 124 Cal.App.4th 154) relating to those statements as described by or
18 disclosed to any government agent;

19 (5) Names, current addresses, and phone numbers of all potential witnesses interviewed by any
20 investigating authority in connection with the pending matter, regardless of whether the People intend to call
21 any such witness (potential witnesses include government informants);

22 (6) For each such witness in this case, all records (including probation, police and other law enforcement
23 reports, and all related supplements, attachments and notes) of citation, arrest or disposition, with respect to
24 any known crimes or other acts (including juvenile matters) of: (i) moral turpitude, (ii) violence/assaultive
25 behavior or weapons; or (iii) sale, possession, or use/influence of controlled substance;

26 (7) With respect to any experts **consulted** by the People, (i) a résumé including any facts upon which they
27 may be so qualified, (ii) all reports or oral or written statements made regarding the pending matter (including
28 the results of physical or mental examinations and results of any forensic or other scientific tests, experiments

1 or comparisons), (iii) any studies, evidence, or other materials upon which they intend to rely for their
2 courtroom testimony, (iv) all materials they reviewed in preparation for such testimony, (v) any potentially
3 exculpatory statements made by any potential prosecution expert witness, regardless of whether the People
4 intend to call such expert at trial; (vi) all correspondence with such witness, including any retainer contracts or
5 letters;

6 (8) All records available to the People or law enforcement (including by way of any waiver executed by the
7 alleged victim(s)) with respect to any victim or witness toxicology, or the extent and/or value of any alleged
8 injuries or other damages, and copies of each such waiver;

9 (9) All results of any forensic science tests (whether conducted in the field or in a lab setting) conducted
10 by/for any agent of the People or of any law enforcement agency, including any DNA or fingerprint 'hits' and
11 comparison materials;

12 (10) All records pertaining to forensic analysis of physical evidence and current disposition of evidence,
13 such as copies of all chain of custody documents for each item of evidence subjected to analysis, starting
14 with the first description or 'log entry' for each item through to the current disposition of that item of evidence
15 (this information should include documentation which indicates where and how the materials were stored
16 [temperature, container type], amount of evidence material which was consumed in testing, amount of
17 material which remains, and where and how the remaining evidence is stored [temperature, container type])
18 in and out of any police department storage facility (please include *all emails sent*);

19 (11) Access to any physical evidence relating to the pending matter;

20 (12) A summary of all efforts by the People or law enforcement to locate the Defendant or notify him of this
21 case, and any documentation or records of such efforts (Serna packet);

22 (13) Defendant's criminal history data ('RAP Sheet' cumulative/summary criminal history and DMV driving
23 record, complete with all data known to the People, including without limitation, any database of California or
24 any other state or federal authority, and any internal OC District Attorney or local law enforcement database,
25 and any police reports or investigatory reports the People may rely on for evidence of the defendant's prior
26 bad acts);

27 (14) Exculpatory Evidence: any evidence that appears favorable to the accused, whether to guilt or to
28 punishment (i.e., sentencing), or to credibility of material witnesses, regardless of whether or not such

1 evidence appears material (i.e., likely to affect the verdict). (Pen. Code §1054.1(e); *Barnett v Superior Court*
2 (2010) 50 Cal.4th 890, 901; *People v Lewis* (2015) 240 Cal. App. 4th 257, 266.)

3

4 DATED: FEBRUARY 10, 2023

Respectfully requested,
5 FRANK S. DAVIS, Alternate Public Defender

6

7

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By: Marian Mikhail
9 Deputy Alternate Defender
10 Attorney of Record
Marian.mikhail@altdef.ocgov.com

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1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
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6 THE PEOPLE OF THE STATE OF CALIFORNIA,) COMPLAINT
7) BWC AGENCY
8 Plaintiff,) AMENDMENT 1
9)
10 vs.) No. 23CM00067
11 XINGFEI LUO [REDACTED]) SAPD 22-09260
12 AKA XINGFEI LOU) DOMESTIC VIOLENCE
13)
14 Defendant(s))

15 The Orange County District Attorney charges that in Orange
16 County, California, the law was violated as follows:
17

18 COUNT 1: On or about April 20, 2022, in violation of Section 166
19 (a) (4) of the Penal Code (DISOBEY COURT ORDER), a MISDEMEANOR,
20 XINGFEI LUO did willfully and unlawfully disobey the terms of a
21 process and court order lawfully issued on or about 10/01/21 by
22 the Superior Court, in and for the County of Orange County,
23 State of California, 18V002374, which lawfully ordered defendant
24 to remove any pictures or references of the protected party from
any social media websites or blogs she may have posted.
25

26 I declare under penalty of perjury, on information and belief,
27 that the foregoing is true and correct.
28

Dated 02-08-2023 at Orange County, California.
SA/CM 22C07939

TODD SPITZER, DISTRICT ATTORNEY

by:

Deputy District Attorney

XINGFEI LUO SAPD 22-09260 PAGE 2

1

RESTITUTION CLAIMED

2

3

[] None

4

[] \$ _____

5

[X] To be determined

6

NOTICES:

7

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

10

11

The People intend to proceed pursuant to Evidence Code sections 1101(b), 1107, 1109, and 1370.

12

13

Pursuant to Welfare & Institutions Code §827 and California Rule of Court 5.552, notice is hereby given that the People will seek a court order to disseminate the juvenile case file of the defendant/minor, if any exists, to all parties in this action, through their respective attorneys of record, in the prosecution of this case.

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

1 FRANK DAVIS
2 Alternate Public Defender
Marian Mikhail
3 Deputy Alternate Defender
600 W. Santa Ana Blvd., Suite 600
Santa Ana, CA 92701
4 Fax: (714) 835-8400
Attorneys for Defendant

MAR 14 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

8 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: 23CM00067
9 Plaintiff,)
10 vs.) NOTICE OF MOTION; MOTION TO
11 XINGFEI LUO,) DISMISS IN VIOLATION OF
Defendant.) DOUBLE JEOPARDY UNDER THE
12) CALIFORNIA AND US
13) CONSTITUTIONS; PENAL CODE
14) SECTION 654; AND IN THE
15) INTEREST OF JUSTICE UNDER
16) PENAL CODE SECTION 1385
17)
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TO: ORANGE COUNTY DISTRICT ATTORNEY,

PLEASE TAKE NOTICE that on MARCH 21, 2023, or sooner if the order for shortening time is granted, at 9:00 a.m. in Department C47 of the above-entitled court, Defendant will move the court for an order dismissing the complaint pursuant to double jeopardy under the U.S. and CA Constitutions; Penal Code Section 654; and in the interest of justice under Penal Code Section 1385.

MOTION

The Defendant hereby moves the court for an order dismissing the complaint in the above-entitled matter on the ground that her right to once in jeopardy has been violated pursuant to the 5th and Fourteenth Amendments to the U.S. Constitution, Article I, Section 15, of the California Constitution, and sections 654 and 1385 of the California Penal Code. This motion is based on these

RECEIVED

MAR 14 2023

OFFICE OF THE DISTRICT ATTORNEY
CENTRAL JUSTICE CENTER
SANTA ANA, CA

1 of 21

Defendant's Omnibus Motion to Dismiss

032

1 moving papers, Case Nos. 18V002374, 19CM06724, and 23CM00067, and any exhibits presented
2 and argument made at the hearing.

3 **STATEMENT OF FACTS AND ATTORNEY DECLARATION**

4
5 The following declaration and statement of facts are based on my personal knowledge
6 and/or information from the court management systems, case files, transcripts, discovery, and
7 procedural history of Case Nos. 18V002374, 19CM06724, and 23CM00067.

8 According to Case No. Case No. 18V002374, on September 28, 2018, complaining witness
9 Tomas Czodor obtained a temporary restraining order at Lamoreaux Justice Center against Ms. Luo.
10 Tomas Czodor claimed that on September 11, 2018, Ms. Luo improperly posted information,
11 photos, and videos about Tomas Czodor. Tomas Czodor claimed provided photos and listed
12 websites in his petition for a restraining order, such as:

13
14 <https://www.youtube.com/watch?v=GUWLrXEC7jo>
15 <https://www.youtube.com/watch?v=WblOlnVDmfA>
16 <https://www.youtube.com/watch?v=uYebVZyYN84>
17 <https://www.youtube.com/watch?v=gOIZigNKw2A> (and for short, youtu.be/
gOIZigNKw2A)
18 <http://www.cheaterreports.com/tomas-czodor/>
19 <https://reportcheatingwife.com/tomas-czodor-santa-ana-orange-county-ca/>
20 <http://www.cheaterplanet.com/category/cheaters>
21 <https://wtfcheater.com/tomas-czodor-santa-ana-orange-county-ca/>
<https://reportcheatingonline.com/tomas-czodor-santa-ana-orange-county-ca/>
<http://gorgeouspainting1.blogspot.com/>
<https://gorgeouspainting.wordpress.com/>

22 See Case No. 18V002374.

23 On October 19, 2018, the court conducted a hearing on the restraining order. At the hearing,
24 in addition the exhibits submitted, Tomas Czodor testified and claimed that Ms. Luo posted online
25 information about him “28 times.” The Court ultimately issued a permanent 5 year restraining
26 order with an expiration for October 19, 2023.
27

1 The order required Ms. Luo to fully stay away from Tomas Czodor, along with an
2 andendum stating:

3 Responding Party is ordered to cease posting the picture or likeness of
4 the Moving Party or refer to him by name on any social media
5 website or blog. **Responding Party is further ordered to remove**
6 **any pictures or references of the Moving Party from any social**
media website or blog she may have posted.

7 *See Case No.18V002374 (emphasis added).*

8 On August 6, 2019, nearly a year later, the District Attorney filed criminal charges against
9 Ms. Luo—count 1 for vandalism of less than \$400; count 2 for disobeying a domestic relations
10 court order for “coming within 100 yards of the protected person”; and count 3 for disorderly
11 conduct unlawful dissemination of private photographs and recordings on or around September 18,
12 2018. *See Case No. 19CM06724.* The case centered on claims Tomas Czodor made in his
13 restraining order petition against Ms. Luo in Case No.18V002374.

14 On August 12, 2019, the Orange County Public Defender was appointed and Ms. Luo was
15 arraigned and entered a plea of not guilty.

16 On July 26, 2021, the District Attorney amended the complaint one day prior to trial to
17 amend the underlying conduct in count 2 of disobeying a domestic relations court order from being
18 within 100 yards to the claim that Ms. Luo “**failed to deactivate website and created new**
19 **websites.**”

20 On July 27, 2021, the 19CM06724 jury trial began. At trial, the the prosecution admitted
21 into evidence testimony and exhibits of websites from 2018 that violated the family court protective
22 order in Case No.18V002374. At trial, the prosecution admitted multiple exhibits depicting websites
23 that were addressed in family court, including a transcript of the family court hearing on October
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1 19, 2018, where Tomas Czodor testified that Ms. Luo posted about him “28 times,” which included
2 “7 cheater websites” and “10 YouTube” videos. *See Case No. 19CM06724.*

3 On July 29, 2021, the jury returned a verdict of guilty on all counts to Case No.
4 19CM06724.

5 A few months after the guilty verdict, on October 1, 2021, Lamoreaux Justice Center
6 conducted another hearing because Ms. Luo sought to terminate the order. The family court
7 maintained the same full stay away order and same expiration for October 19, 2023, but amended
8 the addendum by adding a second paragraph to comport with Free Speech guarantees and
9 protections:

10 Restrainted Party is further ordered to remove any pictures or
11 references of the Protected Party from any social media websites or
12 blogs she may have posted.

13 Restrainted Party shall not post any pictures or likeness of the
14 Protected Party or refer to him by name on any social media or
15 website or blog that would be abusive pursuant to FC §6203 and
16 FC§63210.

17 *See Case No.18V002374.* The language in the first paragraph—requiring Ms. Luo to
18 remove any photos or websites she may have posted—did not change from the
19 October 19, 2018 order.

20 Shortly thereafter, on October 26, 2021, the Criminal Court set restitution in the amount of
21 \$82,346.00 plus 10% interest per year and 10% administrative fee(s) as to count(s) 1, 2, 3 for
22 Tomas Czodor.

23 On November 15, 2021, the Public Defender declared a conflict and the Alternate Defender
24 was appointed.

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1 On behalf of Ms. Luo, the Alternate Defender sought to modify and challenge the restitution
2 amount.

3 On or around November 24, 2021, the prosecution provided defense counsel with a
4 restitution report claiming \$82,346.00 in loss for website removal, income loss, paining repairs, and
5 cost and installation of security cameras. The prosecution again added more claims on or around
6 May 9, 2022, claiming total loss in the amount of \$107,720.76 for income loss, website removal
7 costs, security system purchase and installation, painting repairs, fees for the restraining order
8 obtained, and attorney fees. Tomas Czodor provided quotes and bills for most of the recovery. He
9 claimed and submitted a quote from a company called Guaranteed Removal in the amount of
10 \$54,000 for the removal of 27 links that the prosecution and Tomas Czodor claimed that Ms. Luo
11 posted. *See Case No. 19CM06724.*

14 Unbeknownst to defense, prior to the restitution hearing that was scheduled on May 9, 2022,
15 Tomas Czodor made another police report against Ms. Luo on April 26, 2022 claiming violation of
16 the restraining order.

18 On June 8, 2022, the Court conducted the sentencing, restitution hearing, after continuing
19 the May 9, 2022 hearing. Judge Knox modified the restitution in the amount of \$93,003.76 as to
20 count(s) 1, 2, 3 plus 10% interest from date of sentence per year, payable thru Victim Witness. Of
21 the \$93,003.76, the Court awarded the \$54,000 for website removal of the 27 links admitted at the
22 hearing. The following links were admitted at the restitution, sentencing hearing:

24 <https://cheaterbot.me/05/tomas-czodor-santa-ana-california/amp/>
25 <https://officialcheaters.com/tomas-czodor-california/>
26 <http://www.ripofflist.com/tomas-czodor-california/>
27 <http://www.ripofflist.com/tomas-czodor-california/>
28 <https://www.complainboard.com/tomas-czodor-california/>
 <https://www.badboysreport.com/tomas-czodor-california/>
 <https://www.dirtyex.com/tomas-czodor-california/>

1 <https://www.worstcheaters.com/tomas-czodor-california/>
2 <https://hellocheater.online/tomas-czodor-santa-ana-california/>
3 <https://xbtch.com/reviews/tomas-czodor-santa-ana-ca/97153/>
4 <https://ask-anita.com/complaints/tomas-czodor-santa-ana-ca/>
5 <https://cheatersdiaries.com/tomas-czodor-california/>
6 <https://cheaters.exposed/tag/tomas-czodor-california-cheater-report/>
7 <https://www.theevildoer.com/?s=Tomas+Czodor+>
8 <http://gorgeouspainting1.blogspot.com>
9 <https://gorgeouspainting.wordpress.com/>
10 <https://reportcheaterincalifornia.wordpress.com/blog>
11 <http://liarsandcheaters.com/tomas-czodor-santa-ana-orange-county-ca.html>
12 <http://cheaterland.com/tomas-czodor-santa-ana-ca.html>
13 <http://www.cheaterreports.com/tomas-czodor/>
14 <https://reportcheatingonline.com/tomas-czodor-santa-ana-orange-county-ca/>
15 <https://wtfcheater.com/tomas-czodor-santa-ana-orange-county-ca/>
16 <https://reportcheatingwife.com/tomas-czodor-santa-ana-orange-county-ca/>
17 <http://www.cheaterplanet.com/tomas-czodor-santa-ana-orange-county-ca.html>
18 <https://www.youtube.com/channel/UC2G1-iqyaZoYAtalVsE4mg/about>
19 <https://www.youtube.com/channel/UCUUozht2tl-dK5jROTqnzyg/about>
20 <https://www.facebook.com/photo.php?fbid=10216661770199693&set=pb.1323771948.-2207520000 .. &type=3>

14 See Case No. 19CM06724

15 At the restitution, sentencing hearing, the prosecution did not prove that each link was in
16 fact operable, but instead through the complaining witness testimony, claimed Tomas Czodor was
17 entitled to the resitution in order to provide him with the monetary means to remove the websites.
18 Prior to the resitution hearing, I recall verifying that only 2 out of the 27 links were actually in
19 operation.

21 After the sentencing, restitution hearing ended, Ms. Luo received a letter from law
22 enforcement in early September 2022, and she notified me immediately. In response, I contacted the
23 detective and left a voicemail invoking Ms. Luo's constitutional rights and informed the detective to
24 refrain from speaking with Ms. Luo without the presence of legal counsel. The detective never
25 called back nor informed me what the underlying investigation was about.

1 On December 20, 2022, the Orange County District Attorney filed charges against Ms. Luo
2 for violating Penal Code Section 273.6 on or around April 20, 2022. The District Attorney
3 scheduled arraignment on February 24, 2023.
4

5 When Ms. Luo received the arraignment letter, she contacted me and asked me what these
6 new charges were about. According to the complaint on Vision:
7

8 On or about April 20, 2022, in violation of Section 273.6(a) of the
9 Penal Code (VIOLATION OF A PROTECTIVE ORDER), a
MISDEMEANOR, XINGFEI LUO did intentionally, knowingly, and
unlawfully violate an order issued pursuant to Family Code sections
6320 and 6389 by contacting protected party through online means.
10

11 See Case No. 23CM00067.

12 In response to the ambiguous complaint, I filed a motion to dismiss on January 25, 2023,
13 pursuant to Due Process under the U.S. and CA constitutions for facially insufficiency of the
14 complaint, along with a demur under Penal Code Section 1004.
15

16 On February 7, 2023, the motion to dismiss was heard. However, prior to any court ruling,
17 the prosecution agreed to amend the complaint on its own volition. The first amended complaint
18 was filed on February 8, 2023 and read as follows:
19

20 On or about April 20, 2022, in violation of Section 166 (a) (4) of the
Penal Code (DISOBEDIENCE COURT ORDER), a MISDEMEANOR,
XINGFEI LUO did willfully and unlawfully disobey the terms of a
process and court order lawfully issued on or about 10/01/21 by the
Superior Court, in and for the County of Orange County, State of
California, 18V002374, which lawfully ordered defendant to remove
any pictures or references of the protected party from any social
media websites or blogs she may have posted.
21

22 On February 10, 2023, Ms. Luo was arraigned on the new charges. The prosecution
23 provided defense counsel with the police report, which traced back to Tomas Czodor's April 26,
24 2022 complaint made prior to the scheduled May 9, 2022 resituation hearing.
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1 The police report alleged violations for failing to remove websites about Tomas Czodor
2 involving the older posts addressed in the family court case and the 19CM06724 trial and/or the
3 sentencing, resitution hearing. The police verified that some of the older 2018 postings no longer
4 worked and/or that the creator was unidentifiable. Tomas Czodor also speculated and accused Ms.
5 Luo of newer posts, but the police verified that some of those posts were inoperable and/or that the
6 creator was unidentifiable.

8 On March 13, 2023, the assigned trial Deputy District Attorney for the month of March,
9 informed me the prosecution is for the failure to remove the following website postings:

10 <http://gorgeouspainting1.blogspot.com>
11 <https://gorgeouspainting.wordpress.com/>
12 <https://www.youtube.com/channel/UC2G1-iqyaZoYAetalVsE4mg/about>

13 These are the same websites that were addressed at the 19CM06724 trial October 19, 2018.

14 I declare under penalty of perjury that the foregoing is true and correct.

17 DATED: March 13, 2023

18 Respectfully submitted,
19 FRANK DAVIS, Alternate Public Defender



21 Marian Mikhail
22 Deputy Alternate Defender
23 Marian.mikhail@ocaltdef.com

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MEMORANDUM OF LAW

I. A SUBSEQUENT PROSECUTION THAT INVOLVES THE SAME ALLEGED CRIMINAL ACT OF A PRIOR PROSECUTION VIOLATE DOUBLE JEAPOARDY UNDER THE 5TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 15, OF THE CALIFORNIA CONSTITUTION.

The Fifth Amendment to the United States Constitution guarantees that no “person will be subject for the same offense to be twice put in jeopardy of life or limb.” The Cal. Const. art. I, § 15, contains a nearly identical provision. These constitutional provisions include several distinct protections, including prohibitions against:

- (1) a second prosecution for the same offense after acquittal (*Illinois v. Vitale*, 447 U.S. 410, 415 (1980));
- (2) a second prosecution for the same offense after conviction (*U.S. v. Dixon*, 509 U.S. 688 (1993));
- (3) reprocution after jeopardy had attached in a prior trial that was terminated without a verdict (see *U.S. v. DiFrancesco*, 449 U.S. 117, 130 (1980));
- (4) successive prosecutions for the same criminal act under two different statutes containing the same elements (*U.S. v. Dixon*, 509 U.S. 688, 696 (1993)); and
- (5) multiple prosecutions when collateral estoppel or res judicata applies to an issue of ultimate fact that has been resolved in a prior criminal proceeding, it cannot be relitigated in a subsequent prosecution or retrial (*Yeager v. U.S.*, 557 U.S. 110, 120–121 (2009); *Brown v. Superior Court*, 187 Cal. App. 4th 1511, 1524 (2d Dist. 2010)).

Jeopardy attaches when the defendant is placed on trial on a valid accusatory pleading before a competent court. In a jury trial, jeopardy attaches when the jury is impaneled and sworn. *Martinez v. Illinois*, 134 S. Ct. 2070, 2074 (2014); *Crist v. Bretz*, 437 U.S. 28, 35 (1978). If alternate jurors are used, jeopardy does not attach until the alternates are sworn. *In re Mendes*, 23 Cal. 3d 847, 852–854 (1979).

1 **II. A SUBSEQUENT PROSECUTION THAT INVOLVED THE SAME COURSE OF**
2 **CONDUCT PROSECUTED IN THE PAST VIOLATES CALIFORNIA PENAL**
3 **CODE SECTION 654.**

4 California is not precluded from providing greater double jeopardy protection than that
5 provided by the U.S. Constitution. *Curry v. Superior Court*, 2 Cal. 3d 707, 717 (1970). California
6 provides additional protections embodied in several Penal Code sections. *See e.g.*, Pen. Code §§
7 654(a), 656, 687, and 1023. The Fifth Amendment establishes minimum, double jeopardy
8 protection standards. Under the independent state grounds doctrine, California courts look both to
9 decisions applying the Fifth Amendment and to decisions applying California constitutional and
10 statutory protections. *Bunnell v. Superior Court*, 13 Cal. 3d 592, 601 (1975).

11 The California Supreme Court has expressly recognized that the purpose of Pen Code §
12 654 is to prevent “needless harassment” of a defendant and, therefore, “all offenses … which arise
13 out of the same … course of conduct must be prosecuted in a single proceeding.” *People v.*
14 *Lohbauer*, 29 Cal. 3d 364 (1981).

15 Accordingly, Pen. Code, § 654 is a statutory bar, rather than a constitutional prohibition,
16 against multiple prosecutions for the same offense. However, the protection under Pen. Code, §
17 654 resembles that afforded by the double jeopardy clause, but is different in scope in that it applies
18 only after an acquittal or a conviction and sentencing.

19 In *Kellett v. Superior Court of Sacramento County*, the Supreme Court held that when “the
20 prosecution is or should be aware of more than one offense in which the same act or course of
21 conduct plays a significant part, all such offenses must be prosecuted in a single proceeding unless
22 joinder is prohibited or severance is permitted for good cause. 63 Cal. 2d 822, 827(1966). **Failure**
23 **to unite all such offenses will result in a bar to subsequent prosecution of any offense omitted**

1 if the initial proceedings culminate in either acquittal or conviction and sentence.” *Id.*
2 (emphasis added).

3 Following *Kellett* and Pen. Code § 654, our appellate courts have adopted two different tests
4 to determine a course of conduct for purposes of multiple prosecution *People v. Valli*, 187 Cal. App.
5 4th 786 (3d Dist. 2010). Some appellate courts have established a “time and location” test to
6 determine a course of conduct for purposes of multiple prosecution. These courts
7 find *Kellett* inapplicable where the offenses are committed at separate times and locations, even
8 though the prosecution is aware of the other offenses. See *People v. Marlow*, 34 Cal. 4th 131, 144
9 (2004) (“the murder of separate victims on separate days in separate counties is not a single act or
10 even a ‘course of conduct’ requiring a single prosecution”); *People v. Douglas*, 246 Cal. App. 2d
11 594 (2d Dist. 1966) (series of robberies tried separately from homicide committed during one of the
12 robberies); *People v. Ward*, 30 Cal. App. 3d 130 (2d Dist. 1973) (two separate but related victims
13 assaulted at different locations and time); *People v. Cuevas*, 51 Cal. App. 4th 620 (2d Dist. 1996).

14 A second test applies *Kellett* based on the totality of the facts and whether separate proofs
15 are required for the different offenses. See *People v. Flint*, 51 Cal. App. 3d 333 (2d Dist. 1975).
16 This evidentiary test was restated in *People v. Hurtado*, 67 Cal. App. 3d 633 (2d Dist. 1977): “More
17 specifically, if the evidence needed to prove one offense necessarily supplies proof of the other ...
18 the two offenses must be prosecuted together, in the interests of preventing needless harassment and
19 waste of public funds.” However, this evidentiary test requires more than an overlap of the
20 evidence. Simply using facts from the first prosecution in the subsequent prosecution does not
21 trigger application of *Kellett*. *People v. Valli*, 187 Cal. App. 4th 786 (3d Dist. 2010) (there was little
22 evidentiary overlap between a murder trial and the subsequent trial for evading arrest, because the
23 People only used the evidence of evading in the murder trial to show consciousness of guilt). See
24

1 also *People v. Linville*, 27 Cal. App. 5th 919 (1st Dist. 2018), review denied, (Jan. 16, 2019)
2 (conviction as an accessory to murders did not require proof, nor was it alleged, that defendant was
3 involved in either charged killing, therefore, accessory conviction did not require and was not
4 predicated on an allegation that defendant committed, or was involved in, the murders and the
5 accessory and murder prosecutions did not involve the same course of conduct).
6

7 If it is determined that the prosecution did have timely actual knowledge of multiple
8 prosecutions arising from the same conduct, and one of the prosecutions resulted in either acquittal
9 or conviction and sentence, then the remaining unresolved prosecution is barred by Pen. Code, §
10 654. *In re Dennis B.*, 18 Cal. 3d 687, 693–696 (1976).

12 There are several factors to be weighed in determining whether the prosecutor should have
13 known of the other offense. The threshold factor is the disparity, if any, between the two charged
14 offenses. When both are serious offenses, the court in *In re Dennis B.*, 18 Cal. 3d 687, 694 (1976),
15 recognized the duty imposed on the prosecution.
16

17 When both offenses are serious crimes, the potential for harassment and waste is sufficiently
18 strong that Section 654 imposes on prosecutors an administrative duty to insure that the charges are
19 joined. Although occasional failure to coordinate prosecutorial efforts may result in a defendant
20 guilty of a felony escaping proper punishment, such a risk “is inherent in the preclusion of Section
21 654 of multiple punishment.”
22

23 When the original charge is not a serious crime, the court must then weigh: (1) the disparity
24 in gravity between the charged offenses; (2) the state's substantial interest in maintaining the
25 summary nature of minor offenses; and (3) the state's interest in prosecuting felonies and serious
26 misdemeanors. *In re Dennis B.*, 18 Cal. 3d 687, 695–696 (1976); *Kellett v. Superior Court of*
27 *Sacramento County*, 63 Cal. 2d 822, 827–828 (1966).
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1 **III. A SUBSEQUENT PROSECUTION THAT INVOLVES IDENTICAL ISSUES OF A**
2 **PRIOR PROSECUTION IS BARRED UNDER THE DOCTRINE OF COLLATERAL**
3 **ESTOPPEL.**

4 In *Ashe v. Swenson*, 397 U.S. 436, 445 (1970), the Supreme Court held that the doctrine of
5 collateral estoppel is contained in the Fifth Amendment guarantee against double jeopardy.
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7 As the Supreme Court stated in *Ashe v. Swenson*, 397 U.S. 436, 443–444 (1970): “Collateral
8 estoppel” is an awkward phrase, but it stands for an extremely important principle in our adversary
9 system of justice. It means simply that when an issue of ultimate fact has once been determined by a
10 valid and final judgment, that issue cannot again be litigated between the same parties in any future
11 lawsuit. Although first developed in civil litigation, collateral estoppel has been an established rule
12 of federal criminal law at least since this court’s decision more than 50 years ago in *U.S. v.*
13 *Oppenheimer*, 242 U.S. 85, (1916) ...

14 Federal appellate decisions establish that the rule of collateral estoppel in criminal cases is
15 not to be applied in the hyper technical and archaic approach of 19th century pleading, but with
16 realism and rationality. Where a previous judgment of acquittal was based upon a general verdict, as
17 is usually the case, this approach requires a court to “examine the record of a prior proceeding,
18 taking into account the pleadings, evidence, the charges, and other relevant matter and conclude
19 whether a rational jury could have grounded its verdict upon an issue other than that which the
20 defendant seeks to foreclose from consideration.” *Schiro v. Farley*, 510 U.S. 222, 247–248 (1994).

21 The doctrine is based upon the sound public policy of limiting litigation by preventing a
22 party who has had one fair trial on an issue from again requiring litigation. The purposes of
23 collateral estoppel are to promote judicial economy by minimizing repetitive litigation, to prevent
24 inconsistent judgments which undermine the integrity of the judicial system, and to provide repose
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1 by preventing a person from being harassed by vexatious litigation. *People v. Taylor*, 12 Cal. 3d
2 686, 695 (1974).

3 “[F]ive threshold requirements” must be established for collateral estoppel to bar relitigation
4 of an issue: “(1) the issue to be precluded must be identical to that decided in the prior proceeding;
5 (2) the issue must have been actually litigated at that time; (3) the issue must have been necessarily
6 decided; (4) the decision in the prior proceeding must be final and on the merits; and (5) the party
7 against whom preclusion is sought must be in privity with the party to the former proceeding.”
8 *People v. Garcia*, 39 Cal. 4th 1070 (2006); *People v. Vogel*, 148 Cal. App. 4th 131 (3d Dist. 2007).
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11 **IV. THE INTEREST OF JUSTICE DEMANDS DISMISSAL.**

12 The court has authority under Pen. Code § 1385 to dismiss a prosecution in the “furtherance
13 of justice” at any time, including after trial. “Dismissals under Section 1385 may be proper before,
14 during and after trial.” *People v. Orin*, 13 Cal. 3d 937 (1975). Pen. Code § 1385 permits a trial court
15 to dismiss individual counts in accusatory pleadings, sentencing enhancements, allegations that the
16 defendant has suffered a prior conviction, and allegations that the defendant has suffered a prior
17 “strike.” *In re Varnell*, 30 Cal. 4th 1132, 1134 (2003).
18

19 In *People v. Superior Court of Marin County*, 69 Cal. 2d 491, 505 (1968), the court set forth
20 a balancing test to guide the court in determining whether to dismiss in the interests of justice. The
21 factors to be weighed include: (1) the weighing of the evidence indicative of guilt or innocence; (2)
22 the nature of the crime involved; (3) the fact that the defendant has or has not been incarcerated in
23 prison awaiting trial and the length of such incarceration; (4) the possible harassment and burdens
24 imposed upon the defendant by a retrial; and (5) the likelihood, if any, that additional evidence will
25 be presented upon a retrial. “When the balance falls clearly in favor of the defendant, a trial court
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not only may but should exercise the powers granted to him by the Legislature and grant a dismissal in the interests of justice.”

The power invested in the court by Pen. Code § 1385 is a discretionary power that rests solely with the court. The power of the court to dismiss on its own motion is unaffected by prosecution objection. As the court stated in *People v. Tenorio*, 3 Cal. 3d 89 (1970):

The judicial power is compromised when a judge, who believes that a charge should be dismissed in the interests of justice, wishes to exercise the power to dismiss but finds that before he may do so he must bargain with the prosecutor. A judicial power must be independent, and a judge should never be required to pay for its exercise.

11 The California Supreme Court has held that “the discretion of the judge [under Section 1385] is
12 absolute except where the Legislature has specifically curtailed it.” *People v. Superior Court of*
13 *Marin County*, 69 Cal. 2d 491 (1968).

ARGUMENT

I. THIS CURRENT PROSECUTION VIOLATES DOUBLE JEOPARDY UNDER THE 5TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 15, OF THE CALIFORNIA CONSTITUTION.

19 Frist, the current prosecution violates Ms. Luo's Federal and California Constitutional
20 guarantees because she cannot be tried for the same offense once previously prosecuted and
21 convicted. *U.S. v. Dixon*, 509 U.S. 688 (1993). Second, the two prosecutions involve the same
22 criminal act, but under two different statutes containing the same elements, which also violates
23 Constitutional guarantees. See (*U.S. v. Dixon*, 509 U.S. 688 (1993)). *Id.* At 696. Lastly, collateral
24 estoppel applies here because an issue of ultimate fact that has been resolved in Ms. Luo's prior
25 criminal proceeding, cannot be relitigated in a subsequent prosecution or retrial. *Yeager v. U.S.*, 557
26 U.S. 110, 120–121 (2009); *Brown v. Superior Court*, 187 Cal. App. 4th 1511, 1524 (2d Dist. 2010).

1 **a. Same Offense Once Previously Prosecuted**

2 The facts, order, and issue in this prosecution is the same as 19CM06724. Ms. Luo was
3 found guilty of count 2, Penal Code Section 273.6, of Case No. 19CM06724, which alleged Ms.
4 Luo disobeyed a domestic relations court order for “fail[ing] to deactivate websites and creat[ing]
5 new websites. At sentencing, Ms. Luo was ordered to pay Tomas Czodor \$54,000 in order to give
6 him money to remove 27 websites the prosecution purported Mr. Czodor was entitled to in
7 connection to Count 2’s conviction.

8 Ms. Luo is now charged with Penal Code Section 166(a)(4) in Case No. 23CM00067 for
9 failing to “to remove any pictures or references of the protected party from any social media
10 websites or blogs she may have posted.” The same links the prosecution intends to criminalize in
11 this case, Case No. 23CM00067, are the same links that Ms. Luo was held liable for in Case No.
12 19CM06724. Both cases rely upon the same family court order issued out of Case No. Case
13 No.18V002374.

14 The prosecution’s attempt to rely on the family court’s amended order that was issued on
15 October 01, 2021 for this secondary prosecution—as opposed to the initial order issued on October
16 19, 2018 involving Case No. 19CM06724—is a logical fallacy to suggest there are two separate
17 orders that warrant two separate causes of action. There is only one order, and that amendment
18 issued on October 1, 2021 never modified Ms. Luo’s restraints, but only changes what can
19 prospectively be communicated online to comport with Free Speech guarantees. Nonetheless, the
20 same provision that was relied upon in the 19CM06724 prosecution is the same provision this
21 prosecution relies upon, which is the “[r]esponding Party is further ordered to remove any pictures
22 or references of the Moving Party from any social media website or blog she may have posted.”
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